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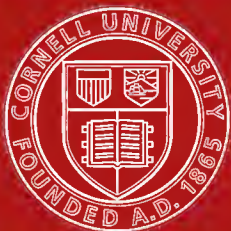
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Shorthand reporters : a digest of statute



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# SHORTHAND REPORTERS

A Digest of Statutes and Legal Decisions Relating to Official Stenographers and Their Reports

Being a thorough and concise compilation of all the general laws, and important special laws, of the various states and territories of the United States, relating to the appointment, rights, duties and compensation of Official Stenographers; together with a reference to such legal decisions as have been handed down by the courts of last resort in the United States touching that subject matter, with chapters on the status, force and effect of the reports made by such reporters.

Second Edition, 1916

Published By the  
National Shorthand Reporters' Association

*Edited by* Gordon L. Elliott  
Attorney-at-Law and Shorthand Reporter  
Des Moines, Iowa

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## PREFACE

*A little to one side you will see a silent man sitting at a little table, with pen in hand, who follows each spoken word with swift and noiseless movements, recording impartially the words of wisdom, wit and folly which follow each other in rapid succession. Witnesses come and go, lawyers question and cross-question, object and argue, the Court quietly announces his rulings, one case is ended and another begins; and through it all the silent man writes, writes, writes, unceasingly and with unslackened speed. Few of those who look upon him realize that they are beholding as near an approach to a miracle as unaided human hands and brains have thus far accomplished.*

—CHARLES CURRIER BEALE.

The first edition of this book was published in 1906 by the National Shorthand Reporters' Association, the editorial work being in charge of Mr. Charles F. Roberts, an attorney-at-law and official stenographer of New Haven, Conn.

The general plan of the first edition has been followed in the second, the digest classification used being practically the same. The entire work, however, has been carefully revised and brought down to date. The statutes have been set out more fully, and the exact language given where practicable. In the digest of cases, the year of each opinion has been added, and the National Reporter System citation is shown, where there is such citation. A table of all cases digested is shown at the end of the book.

Attention is directed to the fact that the cases digested must be read in the light of the statutes existing in the particular jurisdictions when the questions arose, and dates of the opinions and of many of the statutes have been inserted as an aid to such reading. Apparent conflicting opinions from the same state can, in nearly every instance, be accounted for by a change of statute in the interim between such opinions. The law on the subject is almost entirely a matter of statutory construction, and the value of this work will be found to be largely that of affording a ready reference to cases and statutes to determine whether the facts and the law upon which any given opinion was rendered are similar to those involved in any matter which may hereafter come up in the courts for decision.

The material contained in the present volume has been carefully checked and compared, and every effort made to secure accuracy.

The editor is indebted not only to numerous members of the association for assistance in preparing and checking the material used, but to members of the bar in several states, and to the Lawyers' Co-Operative Publishing Co., of Rochester, N. Y., West Publishing Co., of St. Paul, Minn., Vernon Law Book Co., of Kansas City, Mo., and the American Law Book Company of New York City, for valuable hints, and for permission to use material from their publications.

The citations have been brought down to and include cases digested in the September, 1915, advance sheets of the American Digest.

GORDON L. ELLIOTT.

Des Moines, Iowa, December 21, 1915.





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# PART I—STATUTES

## ALABAMA

### CIRCUIT COURTS.

**Appointment—Qualifications—Term—Removal.** That each of the judges of the circuit court of this State is hereby authorized and directed to appoint a competent shorthand writer to perform the duties of official court reporter of their several circuits, not otherwise provided with an official court reporter, but no two or more judges shall appoint the same court reporter; that no person shall be appointed official or special reporter under the provisions of this act who is not able to correctly report in shorthand the proceedings in all trials as the same may occur, and neatly and expeditiously transcribe on the typewriter testimony taken by him; said official reporter shall be an officer of the court and within his circuit shall have the power to administer oaths and he shall hold office for the term of the judge appointing him but be subject to removal at any time at the pleasure of the judge. (Ala. Gen. Laws. 1915, § 1.)

Note: Act of 1915 does not become effective until first Monday after second Tuesday in January, 1917. All laws in conflict with its provisions are by its terms expressly repealed.

Until Act of 1915 becomes effective circuit court reporters are generally governed by Act of 1909, page 263, providing a salary of \$1,200 per annum and a transcript fee of five cents per folio.

There are various local acts also effective until January, 1917. The legislature of 1915 abolished all chancery, law and equity, and city courts, and placed the judiciary of the state under the circuit judges. A bill providing for the recircuiting of the state, passed by the legislature, was vetoed by the governor.

**Duties—Transcript Fees.** It shall be the duty of such official court reporter to attend the sessions of the courts of the circuits of which he is official reporter in person except as herein otherwise provided, and to take full stenographic notes of the oral testimony and proceedings except arguments of counsel, in every case in such courts as the presiding judge shall direct or any party thereto may request to be reported, and must also note the order in which all documentary evidence is introduced; all objections and rulings of the court thereon and exceptions which may be reserved thereto. The original notes taken by such official court reporter shall be preserved by him and shall be treated as a part of the records of said court and on his retirement from office shall be turned over to the respective clerks of the courts. He shall, when directed by the presiding judge, attend the grand jury in its investigations and take notes of the testimony before it as may be directed by the solicitor or foreman, which notes shall be filed with the clerk of the court where taken; he shall furnish within thirty days or such other time as the judge of the court may prescribe to any party to a cause reported by him demanding the same a typewritten transcript of his notes or any part thereof except proceedings in the grand jury upon the payment of a transcript fee of ten cents for each 100 words thereof, and for each additional copy to be made at the same time five cents for each 100 words thereof; that in all cases where directed by the presiding judge such official court reporter shall furnish one typewritten copy of the testimony and proceedings to be filed with the clerk of the court. He shall also in every case reported, unless otherwise directed by the court, within the

time above provided, file with the clerk a typewritten copy of the oral charge delivered by the judge to the jury on the trial of the cause, no charges to be made for such copy. (Id., § 2.)

**Substitute.** Should the official reporter herein provided for on account of sickness or other cause, be unable to report the testimony of any trial as provided in this act, the judge of the court shall have authority to appoint a special reporter to serve until the official reporter can resume his duties in such court, the compensation of such special reporter to be the same and paid in like manner as herein provided for official reporters; provided, that in circuits having two judges or more the stenographer appointed shall, when not otherwise engaged in the discharge of his official duties, be subject to the direction of any judge of such circuit, it being the intention and purpose of this provision to avoid the necessity of appointing a special reporter whenever any regular reporter of the circuit is available. (Id., § 3.)

**Taxable Fee.** That in all cases reported by any official reporter or special reporter, there shall be taxed as a part of the costs of the case a fee of five dollars for each day or fraction thereof that such reporter shall be engaged in reporting a case, to be collected as in other cases, and when collected paid by the clerk into the county treasury of the county in which the case is tried (Id., § 4.)

**Salary, How Paid.** That such official reporter shall receive a salary of twelve hundred dollars per year, payable in monthly installments by the counties composing the circuits, each county to pay its pro rata of such salary based upon the assessed taxed valuation of all property of such county for the preceding year; such payment to be made on certificates issued by the judge of the court in favor of such official reporter for the respective amounts due by the several counties each month, the same to be paid by the treasurer of each county out of the general funds thereof on presentation in the same manner as juror's certificates are now paid. (Id., § 5.)

**Oath.** That before any official or special reporter shall enter upon the duties of his office he must subscribe to an oath to support the Constitution and laws of the State of Alabama and to faithfully perform all the duties of such office. (Id., § 6.)

**Supplies.** That all stationery and supplies to be used by such official or special reporters in their capacity as such shall be furnished and paid for by the county or counties composing the respective circuits in the manner provided for the payment of the salaries of such official and special reporters on requisition signed and approved by the judge of the court. (Id., § 7.)

**Penalty for Overcharge.** Any official or special reporter who charges more than the fees herein specified for making any transcript, shall be guilty of a misdemeanor, and upon such fact being made known to the judge appointing such official or special reporter shall be promptly removed. (Id., § 8.)

**Certain Circuits.** In circuits having three circuit judges, each judge shall appoint one competent court reporter, each of such court reporters shall receive a salary of \$175.00 per month, to be paid by the county as provided for in this act as to other counties, and each and every provision of this act not in conflict with this section shall apply to such reporters. This salary shall be the only compensation to which such reporters shall be entitled to receive for any and all services rendered by this act. The fees to which said reporters would be entitled shall be charged by the clerk

or register of the court and shall be collected by him and paid into the treasury of the county. The idea and intention hereof being to pay such reporter said salary and have the fees allowed herein charged and collected by the clerk or register and paid into the county treasury. (Id., § 9.)

Note: This section will apply to the 13th circuit, containing the counties of Baldwin, Washington and Mobile.

**Certain Circuits—Criminal Divisions.** In judicial circuits having more than five judges, the judge or judges of criminal divisions of such courts are hereby authorized to each appoint and designate a competent court reporter to report the proceedings of any case pending in their respective divisions, when the presiding judge of such division shall deem it necessary or proper to have such cases reported. The reporter so designated shall receive \$5.00 per day for his services while actually engaged in reporting the proceedings and shall receive ten cents per 100 words for the transcript when the judge or solicitor desires a copy of such transcript; said amounts to be paid out of the county treasury upon the certificate of the judge that the amount is correct. (Id., § 10.)

Note: This section will apply to the 10th circuit, Jefferson county, with ten judges. § 12½ of the act reads: "This act shall not apply to circuits having five or more judges except as to special reporters as provided for in § 10."

# ALASKA

## DISTRICT COURTS.

**Appointment.** Each of the judges shall have authority to employ an official stenographer at such compensation as shall be fixed by the Attorney General. (Comp. Laws, 1913, § 363.)

**Note:** The Comptroller of the Treasury in a decision of date Dec. 8, 1914 (see National Shorthand Reporter, Jan., 1915), held that the resignation of a judge of the District Court of Alaska did not *ipso facto* terminate the appointment of the court stenographer made by such judge, but that said stenographer was entitled to hold said position until his resignation, death, or dismissal, or until he was superseded by a new appointee.

# ARIZONA

## SUPERIOR COURTS.

**Appointment—Term.** The judge of the superior court and each division thereof in each county in the state shall appoint a court reporter, who shall be a ministerial officer of the court, and who shall hold his office during the pleasure of the judge appointing him. (Rev. Stats. 1913, Civil Code, §619. Acts of 1912, Ch. 94, § 1.)

**Oath.** Before entering upon his duties, such court reporter shall take and subscribe to the official oath prescribed by law, which oath shall be administered by the judge of said court. (Id. § 620; Id., § 2.)

**Qualifications—Examination—Certificate.** No person shall be appointed court reporter of the superior court nor of any division thereof until he has been examined as to his competency by a committee of at least three members of the bar practicing in said court, to be designated by the judge thereof; and has written in the presence of such committee at the rate of not less than one hundred fifty words a minute for five consecutive minutes upon matter not previously written or known to him; and has immediately thereafter and in the presence of the committee read back from his notes the matter so read to him; and has, within twenty-four hours thereafter, delivered to said committee an accurate transcript thereof. If the applicant pass such examination, the committee shall make a certificate to that effect, showing the number of words per minute so written and transcribed, to which certificate shall be attached the matter so read to the applicant, or a copy thereof, and also the original notes and transcript of the same made by the applicant upon such examination, and file the same in the office of the clerk of said court. (Id., § 621; Id., § 3.)

**Duties.** It shall be the duty of said court reporter to be in attendance upon said court during the hearing of all matters before it, unless excused therefrom by the judge of said court, and he shall make stenographic notes of all oral proceedings had upon the hearing of all matters before the court; but, unless requested by the court or counsel so to do, he shall not be required to make stenographic notes of arguments of counsel to a jury, nor of argument of counsel to the court in the absence of a jury. Upon the payment or tender to him of the fees hereinafter prescribed, it shall be the duty of such reporter to furnish, without unnecessary delay, to any person



who may request the same, a typewritten transcript of all or any part of the proceedings so reported by him in such matter in said court, and upon request so to do he shall certify that such transcript is a correct and complete statement of such proceedings. (Id., § 622; Id., § 4.)

**Same—Charge of Court.** After the evidence is closed and before the commencement of the argument, the court shall charge the jury. The charge shall be taken down by the court reporter, and at the request of either party shall be written out, signed by the judge, and filed with the clerk. If the court reporter be not present, the charge shall be in writing, unless waived, and signed by the judge. (Id., § 514.)

**Compensation.** The court reporters of the superior courts, and the divisions thereof, in the counties of Maricopa, Pima, Yavapai, Gila and Cochise, shall each receive a salary of two thousand dollars per annum, and in the counties of Greenlee, Coconino, Apache, Navajo, Santa Cruz, Yuma, Pinal, Graham and Mojave, the salaries of said court reporters shall be fixed by the judges of said superior courts, which salary shall be approved by the board of county supervisors of each of said counties. The salaries of court reporters shall be paid semi-monthly by the respective counties in which they are appointed. Such reporters shall also receive, for transcribing shorthand notes, fifteen cents per folio of one hundred words for the first copy, and five cents per folio for each carbon copy thereof, if ordered at the same time as the first copy, and by the person requesting the first copy. The reporter, when requested in advance, shall furnish to the county attorney, or the attorney general of the state, free of charge, a copy of the transcript of testimony in every instance where a transcript is made on an appeal taken in a criminal case, and to the attorney general when the state is a party. (Id., § 623; Id., § 5.)

**Assistants.** The reporter may employ such deputies or assistants as he may deem necessary for the efficient conduct of his office, and such deputies or assistants shall be compensated by him. (Id., § 624; Id., § 6.)

**Supplies Furnished.** The necessary supplies for the conduct of the office of court reporter shall be furnished by the county in which he holds his office. (Id., § 625; Id., § 7.)

**To Assist County Attorney in Certain Counties.** The court reporters of the counties of Greenlee, Coconino, Apache, Navajo, Santa Cruz, Yuma, Pinal, Graham and Mojave shall, with the consent of the judge, when requested by the county attorney of said counties so to do, render stenographic services, without charge, exclusive of transcripts of, or work in, the superior and other courts. (Id., § 626; Id., § 8.)

#### PRELIMINARY HEARINGS.

**Appointment—How Taken—Compensation.** The examination of witnesses shall be oral, and neither their testimony nor that of the defendant shall be reduced to writing except as otherwise provided in this section. The testimony of each witness, in cases of homicide, must be reduced to writing, as a deposition, by the magistrate, or under his direction; and in other cases upon the demand of the county attorney. The magistrate before whom the examination is had, shall, upon the demand of the county attorney, order the testimony taken down in shorthand, in all the examinations herein mentioned, and for that purpose he may appoint a shorthand reporter. The deposition or testimony of the witnesses must be authenticated in the following form:

1. It must state the name of the witness, his place of residence, and his business or profession.

2. It must contain the questions put to the witness, and his answers thereto, each answer being distinctly read to him as it is taken down, and being corrected or added to until it conforms to what he declares to be the truth; except where the testimony is taken down in shorthand, when the answer or answers of the witness need not be read to him.

3. If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined must be stated.

4. The deposition must be signed by the witness, or if he refuses to sign it, his reason for refusing must be stated in writing as he gives it; except in cases where the deposition is taken down in shorthand, when it need not be signed by the witness.

5. It must be signed and certified by the magistrate when reduced to writing by him, or under his direction, and when taken down in shorthand, the transcript of the reporter appointed as aforesaid, when written out in longhand writing and certified as being a correct statement of such testimony and proceedings in the case, shall be prima facie a correct statement of such testimony and proceedings. The reporter shall, within ten days after the close of such examination (if the defendant be held to answer to the charge) transcribe into longhand writing such shorthand notes, and certify and file the same with the clerk of the superior court of the county in which the defendant was examined, and shall in all cases file his original notes with said clerk.

6. The reporter's compensation shall be fixed by the magistrate before whom the examination is had and shall not exceed the sum of five dollars per day for each day actually attended upon such examination, and fifteen cents per folio for transcribing shorthand notes into longhand writing, to be allowed and paid as other county charges are allowed and paid. (Rev. Stats. 1913. Penal Code, § 881; Laws of 1903, Ch. 25.)

# ARKANSAS

## CIRCUIT COURTS.

**Appointment—Qualifications—Term.** The judge of each judicial court shall appoint a competent official stenographer for his circuit, upon the petition of a majority of the licensed resident lawyers of his circuit, which petition shall recommend some competent person who is a resident of the state. The official stenographer shall be a sworn officer of the court, and his term of office shall end at the same time as that of the judge who appointed him, and he may be dismissed by the judge for incompetency, neglect of duty or misbehavior. (Dig. of Stats. 1904, § 1329.)

**Duties.** He shall attend all terms of the circuit court held within and for the circuit for which he is appointed, and upon the request of either party he shall make stenographic reports of all oral proceedings had in such court, including the testimony of witnesses with the questions to them, verbatim, the oral instructions of the court, and any further proceedings or matter, when directed by the presiding judge or upon the request of counsel so to do, and whenever any question arises as to the admissibility or rejection of evidence, and an argument is made to the court, such arguments shall not be recorded unless requested by counsel, but the objections to rulings thereon, and any exception taken by either party, or his counsel, to such rulings, shall be briefly noted. (Id., § 1330.)

**Transcripts.** Within twenty days from the conclusion of the trial, or the time of demand if made after trial, a longhand or typewritten transcript with a caption showing the style of the case, its number and the court in which it was tried and when tried, shall be furnished by the stenographer, signed, certified and filed in the office of the clerk of the court. (Id., § 1331.)

**Notes to be Kept in Clerk's Office.** The stenographic notes shall be kept in the office of the clerk of the court wherein the notes were taken, but the stenographer shall have the right to carry them from court to court within the judicial district for the purpose of transcribing the same for the use of the parties and of the court, in which case they shall be returned to the clerk after having been transcribed. (Id., § 1332.)

**Compensation.** The stenographer shall receive \$800 a year to be paid quarterly out of the stenographer's fund by the several counties composing the circuit in which he is appointed, in proportion to the population that each county bears to the population of the whole circuit as shown by the last federal census. Such salary to be adjusted by the presiding judge. (Id., § 1333.)

**Collection of Fees as Costs.** A stenographer's tax fee of \$3.00 shall be taxed in each case in which a stenographer has served upon the request of either party, and the same shall be collected as costs and paid into the treasury of the county in which the case is tried, in the same manner as the jury tax is collected and paid in; and if either party demands a bill of exceptions, he shall be charged at the rate of five cents a folio for a transcript, the same to be charged by the clerk and collected by the sheriff as costs and paid into the county treasury together with the tax fee of \$3.00, as a stenographer's fund, which shall be kept as a separate fund. (Id., § 1334.)

**Transcript to Persons Unable to Pay.** No party shall in any case be denied a bill of exceptions on account of his inability to pay the stenographer's tax fee and the fee for a transcript, when he makes affidavit that he has no property and is unable to pay for the same. (Id., § 1335.)

**Certificate to Transcript.** The transcript of the stenographer mentioned in § 1334 shall be certified to by the stenographer and shall be taken as a part of the transcript and no clerk shall make any additional charge for the same other than the five cents a folio mentioned in that section. (Id., § 1336.)

**Limited to Circuit Courts.** No court or judge except judges of circuit courts shall appoint a stenographer whose salary, costs, expenses or per diem, or any part thereof shall be paid by the state or county, or taxed as costs against any party in any proceeding either civil or criminal. (Id., § 1544.)

**Depositions.** Officers and stenographers taking depositions shall prepare an original and two carbon copies of same at the time of transcribing for which service said officer shall be allowed a reasonable compensation to be fixed by the court and taxed as cost. The plaintiff and defendant shall each be furnished with one of these copies for their files, and the original shall be filed and retained in the office of the clerk as herein set out. (Act of 1915, Act No. 290, § 18.)

**Transcripts—Copies—Fee for.** Upon the trial of any issue or motion in any section or special proceeding, the court may order all oral testimony to be taken down in shorthand by a stenographer, and said stenographer, whether he be the official court stenographer or one specially designated by the court for the purpose, shall transcribe his stenographic notes at the request of the court or counsel for either party, and when so transcribing said notes he is hereby required to make three copies, two of which may be carbons, of the proceedings so reported by him, of which the original copy shall, in case of an appeal, be delivered to appellant's counsel to be inserted in the original transcript as a part of the same and for which portion so inserted the clerk shall receive no pay. Another copy shall be delivered to appellant's counsel to be used in the bill of exceptions and filed in the clerk's office, while the third copy shall be kept on file in the clerk's office with the other papers in the case, which copy so filed shall, in cases in chancery, be treated as and have the same effect as depositions in the case taken in the regular manner. And in such cases, as well as in cases where depositions are taken in shorthand and transcribed by a stenographer, whether the stenographer is the officer taking said depositions or the party called to write and transcribe same as provided by law, the court shall allow a reasonable fee for such taking and transcribing and making said three copies, to be taxed as cost of suit. (Id., § 19.)

Note: There are now eighteen judicial circuits in the state of Arkansas, and in sixteen of them special acts have been passed, as a rule following the wording of the general law, but increasing the salary of the stenographer. Such special acts are as follows:

Circuit.	Date of Act.	Salary.
1—Grand Jury—	1915	\$1,500.00
1—	1909	1,500.00
2—Amended	1907	1,500.00
2—Grand Jury—	1913	1,200.00
3—Amended	1915	1,800.00 and 10c
4—	1915	per folio in all cases. 1,500.00 with 12½c per folio for orig. and 5c per folio for duplicate, said fees paid into county treasury.
5—	1903	1,200.00
6—1st Division—Amended	1915	1,900.00
6—2nd " "	1915	1,800.00
6—3rd " "	1915	1,800.00
8—Amended	1909	1,600.00
9— " "	1909	1,400.00

## STATUTES

Ark.

10—	“	1909	1,600.00
11—		1909	1,800.00
12—	“	1911	1,800.00 and
			10c per folio in civil and mis-
			demeanor, and 5c per folio in
			felony cases.
13—	“	1911	1,500.00
14—	“	1913	1,200.00
15—		1907	1,200.00
17—		1913	1,500.00
18—Amended		1915	1,800.00 and
			10c per folio for an original and
			one duplicate copy in all cases.

In all of the circuits the salary of the court stenographer is payable in county warrants, and in most of the circuits these warrants are subject to a considerable discount, and in some counties as much as 50 per cent.

# CALIFORNIA\*

## SUPREME COURT.

**Appointment—Term—Duties—Compensation.** The Supreme Court may appoint two phonographic reporters who shall hold office during the pleasure of the court. The reporters shall attend the sessions of the court and shall take notes of the points made by counsel in all arguments; and shall take down the opinions of the courts when delivered orally and, when required by the court, shall write out the stenographic notes and deliver such writing to the reporter of the decisions of the court, and shall perform such other duties as may be imposed upon them by the court or a justice thereof. One of such reporters shall receive \$3,000 per annum, and the other shall receive \$2,400. (Pol. Code, 1905, §§ 739, 769, 770.)

## DISTRICT COURTS OF APPEAL.

**Appointment—Qualifications—Duties—Compensation.** Each of the three District Courts of Appeal may employ and appoint a phonographic reporter who shall be competent to write in shorthand at the rate of one hundred and fifty words per minute, and to transcribe the same correctly. His duties shall be to take down in shorthand the proceedings of the court, and to act as secretary to the judges in the discharge of their official duties. His compensation shall be at the rate of \$2,400 per annum. (Pol. Code, 1907, § 759.)

## SUPERIOR COURTS.

**Appointment—Duties—What to Take, Filing Transcripts.** The judge or judges of any superior court in the state may appoint a competent phonographic reporter, or as many such reporters as there are judges, to be known as official reporter or reporters of such court, and to hold office during the pleasure of the judge or judges appointing them. Such reporter, or any of them, where there are two or more, must, at the request of either party, or of the court in a civil action or proceeding, and on the order of the court, the district attorney, or the attorney for the defendant in a criminal action or proceeding, take down in shorthand all the testimony, the objections made, the rulings of the court, the exceptions taken, all arraignments, pleas and sentences of defendants in criminal cases, the arguments of the prosecuting attorney to the jury, and all statements and remarks made and oral instructions given by the judge; and if directed by the court, or requested by either party, must, within such reasonable time after the trial of such case as the court may designate, write out the same, or such specific portions thereof as may be requested in plain and legible longhand, or by typewriter or other printing machine, and certify to the same as being correctly reported and transcribed, and when directed by the court, file the same with the clerk of the court. (Code Civ. Pro., 1903, § 269.)

**Qualifications—Examination—Certification.** No person shall be appointed to the position of official reporter of any court in this state, except upon satisfactory evidence of good moral character, and without being first examined as to his competency by at least three members of the bar practicing in said court, such members to be designated by the judge or judges of said court. The committee of members of the bar so designated shall, upon the request of the judge or judges of said court, examine any person as to his qualifications whom said judge or judges may wish to appoint as official reporter; and no person shall be appointed to such position upon

\*Dates in references to sections show passage of act or last amendment and not last edition of the code.

whose qualifications such committee shall not have reported favorably. The test of competency before such committee shall be as follows: The party examined must write in the presence of such committee at the rate of at least one hundred and fifty words per minute, for five consecutive minutes, upon matter not previously written by or known to him, immediately read the same back to the committee, and transcribe the same into longhand writing, plainly and with accuracy. If he pass such test satisfactorily, the committee shall furnish him with a written certificate of that fact, signed by at least a majority of the members of the committee, which certificate shall be filed among the records of the court. No official reporter of any court or official reporter pro tempore shall be competent to act as official reporter in any court of the state who shall have failed or neglected to transcribe any notes in a criminal proceeding or action on appeal and which notes are required by law to be by him transcribed until he shall have fully completed and filed all transcription of his notes in any criminal case on appeal required by law to be by him transcribed. (Id., 1909, § 270.)

**Shall Attend in Person, Except—Reporters Pro Tempore.** The official reporter of any superior court shall attend to the duties of his office in person, except when excused for good and sufficient reason by order of the court, which order shall be entered upon the minutes of the court. Employment in his professional capacity elsewhere shall not be deemed a good and sufficient reason for such excuse. When the official reporter of any court has been excused in the manner provided in this section, the court may appoint an official reporter pro tempore, who shall perform the same duties and receive the same compensation during the term of his employment as the official reporter. (Id., 1880, § 271.)

**Oath.** The official reporter of any court, or official reporter pro tempore, shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office. (Id., 1880, § 272.)

**Transcript Prima Facie Correct.** The report of the official reporter, or official reporter pro tempore, of any court, duly appointed and sworn, when transcribed and certified as being a correct transcript of the testimony and proceedings in the case, is prima facie evidence of such testimony and proceedings. (Id., 1903, § 273.)

**Compensation.** For his services the official reporter shall receive the following fees, except in counties where a statute provides otherwise:

For reporting testimony and proceedings ten dollars per day, which amount, when more than one case is reported in one day, must be apportioned by the court between the several cases.

For transcription, for one copy, twenty cents per hundred words; for two copies made at one time, fifteen cents each per hundred words; for three copies made at one time, eleven cents each per hundred words; for four copies made at one time, nine cents each per hundred words; and for five or more copies made at one time, eight cents each per hundred words.

In criminal cases, the fees for reporting and for transcripts ordered by the court to be made must be paid out of the county treasury upon the order of the court; provided, that when there is no official reporter in attendance, and a reporter pro tempore is appointed, his reasonable expenses for traveling and detention must be fixed and allowed by the court and paid in like manner.

In civil cases the fees for reporting and for transcripts ordered by the court to be made must be paid by the parties in equal proportions, and either party may, at his option, pay the whole thereof; and, in either case, all amounts so paid by the party to whom costs are awarded must be taxed

as costs in the case. The fees for transcripts and copies ordered by the parties must be paid by the party ordering the same. No reporter must be required to perform any service in a civil action until his fees therefor have been paid to him or deposited with the clerk of the court. (Id., 1903, § 274.)

**Transcribing of Opinions, Etc., a County Charge.** Judges of the superior court may have opinions and instructions in any action, or any order, commitment or judgment in any insanity, probate, county official bond or juvenile court proceeding, taken down in shorthand and transcribed by the official reporter, the cost thereof to be a legal charge against the county. (Id., 1911, § 274a.)

**Transcript Fees in Criminal Cases Appealed.** The phonographic reporter shall receive for making an original and three carbon copies of the portion of his notes ordered transcribed, or transcribed in any criminal case after sentence, the sum of thirty cents per folio; provided, however, that he shall receive no compensation for transcribing any notes unless the same shall have been transcribed by him within the time provided by law. (Id., 1909, § 274b; Penal Code, 1909, § 1247.)

**Proceedings at Time of Pronouncing Judgment to be Reported.** The proceedings at time of pronouncing judgment in criminal cases shall be reported and transcribed in duplicate by the official reporter, one copy to be filed with the county clerk, and one copy to be sent to the warden of the prison to which the defendant is sentenced. (Penal Code, 1909, § 1192a.)

**Transcript Forwarded to Governor, When.** Immediately after conviction requiring judgment of death, transcript of testimony and proceedings must be forwarded to governor of state. (Penal Code, 1872, § 1218.)

**When No Reporter, Clerk May Be Required to Take Testimony in Writing.** Whenever there is no shorthand reporter of the court in attendance, either party may require the clerk to take down the testimony in writing. (Code Civ. Pro., 1872, § 1051.)

**Challenge to Jury Panel.** A challenge to the panel of jurors must be in writing noted by the phonographic reporter, and must state the facts constituting the grounds of the challenge. (Penal Code, 1872, § 1060.)

**Oral Charges to be Reported.** When the charge of the court is not given in writing it must be taken down by the phonographic reporter. (Penal Code, 1874, § 1093.)

#### EXAMINING MAGISTRATES—Preliminary Hearings.

**Appointment—Transcripts—Compensation.** The testimony of each witness in cases of homicide must be reduced to writing, as a deposition, by the magistrate or under his direction, and in other cases upon the demand of the prosecuting attorney, or the defendant, or his counsel. The magistrate before whom the examination is had may, in his discretion, order the testimony and proceedings to be taken down in shorthand in all examinations herein mentioned, and for that purpose he may appoint a shorthand reporter. The deposition or testimony of the witness must be authenticated in the following form:

1. It must state the name of the witness, his place of residence and his business or profession.
2. It must contain the questions put to the witness and the answers thereto.
3. If a question put be objected to on either side and overruled, or a witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, must be stated.



4. The deposition must be signed by the witness, except in cases where it is taken down in shorthand, when it need not be signed by the witness.

5. When taken down in shorthand, the transcript of the reporter so appointed, when written out in longhand and certified as being a correct statement of said testimony and proceedings, must be signed and certified by the magistrate. The reporter shall within ten days after the close of such examination, if the defendant be held to answer the charge, transcribe into longhand writing his said shorthand notes, and certify and file the same with the county clerk of the county, or city and county, in which the defendant was examined, and shall in all cases file his original notes with said clerk.

6. The reporter's compensation shall be fixed by the magistrate before whom the examination is had, and shall not exceed that now allowed reporters in the superior courts of this state, and shall be paid out of the treasury of the county, or the city and county, in which the examination is had, on the certificate and order of the said magistrate. (Penal Code, 1885, § 869.)

Note: The practice is to allow the same compensation as is allowed superior court reporters under § 269 et seq., Code Civ. Pro.

Upon demand of the defendant, or his attorney, the magistrate must order a transcript of the depositions taken on the information, or the examination, to be immediately furnished said defendant, or his attorney, after the commitment of said defendant, and the reporter shall furnish said deposition as aforesaid, and shall receive compensation to be paid by the county for the same as provided by Sub. 6 of § 869 of this code. (Penal Code, 1911. § 870.)

#### GRAND JURY.

**Appointment—Charge Against the County.** The grand jury, on the demand of the district attorney, whenever criminal cases are being investigated before them, must appoint a competent stenographic reporter to be sworn and report the testimony that may be given in such cases in shorthand, and to transcribe the same in all cases where an indictment is returned. If an indictment has been found against a defendant, a copy of the testimony given in his case before the grand jury, shall be served upon him within five days after the discharge of the grand jury, or if the grand jury has not been discharged, at least five days before the cause is set for trial. The services of such stenographic reporter shall constitute a charge against the county. (Pol. Code, 1911, § 925.)

#### CORONERS.

**Appointment—Salary—Duties.** It shall be lawful for the coroner of every county, or city and county, having one hundred thousand or more inhabitants to appoint an official reporter, who shall hold office during the pleasure of the coroner. The salary of said official reporter shall be \$150 per month, payable monthly out of the general fund of the county. He shall report, transcribe and certify in duplicate the testimony and proceedings of all inquests, file one copy with the coroner and the other with the county clerk, together with his shorthand notes. The report of the official reporter shall be prima facie a correct statement of such testimony and proceedings. (Statutes of 1895, p. 168. Superseded as to City and County of San Francisco by its charter.)

# COLORADO

## DISTRICT COURTS.

**Appointment—Duties.** The judge of each judicial district may appoint a competent shorthand reporter to attend during any term of the court, or any part thereof, or during the trial of any cause or causes. Such reporter shall, on the direction of the court, in any case, take down in shorthand all the testimony, the rulings of the court, the exceptions taken, and oral instructions given, and other proceedings had during the trial of any cause, and in such causes as the court may designate, and in such reasonable time after the trial as the court may appoint, shall write out the same in plain, legible longhand writing, and file it, together with the original shorthand writing, with the clerk of the court in which the cause was tried. (Mills' Ann. Stat., 1912, § 1585.)

**Compensation.** Such reporter shall receive for his services such pay as the judge of the court may direct, to be paid from the treasury of the county wherein the court sits, not exceeding ten dollars per diem for reducing the testimony to shorthand, and not exceeding twenty cents per folio of one hundred words for making transcript in longhand, when so directed by the court. The compensation to said reporter shall be paid as follows: The per diem allowance by the county in which suit may be pending, and the allowance for transcript in longhand shall be paid as other costs of the suit. (Id., § 1586.)

Note: There are thirteen judicial districts in the state of Colorado, in two of which there are two judges each, in one there are three, and in the one in which the City and County of Denver is located there are five.

Each judge appoints a reporter. In all the districts of the state, with the exception of the second judicial district, comprising the City and County of Denver, the per diem is fixed at ten dollars and the folio rate at twenty cents. In the City and County of Denver the compensation of the reporters has been fixed at \$2,700 per annum, payable at the rate of \$225 a month, and the transcript fee has been fixed at fifteen cents per folio of one hundred words, except on daily copy work, which is twenty cents per folio.

## COUNTY COURTS.

**Appointment—Duties.** The judge of any county court in this state may, when in the opinion of the board of county commissioners of such county it shall be expedient or necessary, appoint a competent shorthand reporter to attend during any term of the court or any part thereof or during the trial of any cause or causes, whose duties shall be such as are now or may be hereafter provided by law for such reporters employed in the district courts of this state. (Mills' Ann. Stat., 1912, § 1689.)

**County Commissioners to Authorize Fees.** When in the opinion of the board of county commissioners of any county it shall be expedient or necessary to employ a shorthand reporter for the county court of such county the board shall pass a resolution to that effect and certify the same to the county judge of said county who may thereupon appoint such reporter as provided in section one of this act. (Id., § 1690.)

**Compensation.** Such reporter shall receive for his services such pay as the board of county commissioners may fix, to be paid from the treasury of the county, not exceeding ten dollars per diem for reducing the testimony to shorthand, and not exceeding fifteen cents per folio of one hundred words for making transcripts in longhand, when so directed by the court. The compensation to said reporter shall be paid in the same manner as is now or may be hereafter provided for such reporter in the district courts. (Id., § 1691.)

Note: Only a few counties in the state have availed themselves of this statute, and the compensation is fixed well within the maximum allowed. In the City and County of Denver the compensation has been fixed at \$2,400 and fifteen cents per folio for transcript.

The county judges are allowed, by statute, to call in judges from other counties, to assist them in the trial of cases, and in the City and County of Denver there are practically two judges working constantly, and occasionally a third judge, and a reporter is provided for each.

#### COUNTY COURTS—Second-class counties.

**Appointment—Duties—Compensation.** The county judge in counties of the second class with a population of 40,000 or over may, also, appoint a competent shorthand reporter to attend during any term of the court or any part thereof, or during the trial of any cause or causes, whose duties shall be as are now or may be hereafter provided by law for such reporters employed in the District Courts of this state, and to perform such other and further duties as may be required of him by the judge of the said county court. Such reporter shall receive for his services such compensation as the judge of the county court may fix, not exceeding the sum of \$125.00 per month, to be paid from the treasury of the county, for reducing the testimony to shorthand and performing such other duties as may be required of him by the judge of the court; and not exceeding the sum of fifteen cents per folio of one hundred words for making transcripts in longhand, when so directed by the court. He shall present his bill to the county commissioners duly sworn to by himself as correct, and duly certified by the judge. Such bills shall be ordered by the county commissioners to be paid out of the fund appropriated for the expense of the county court. The allowance for transcripts in longhand shall be paid by the litigants as other costs of suit. (Laws of 1913, p. 223, § 1.)

#### SUPREME COURT (Appellate Court.)

**Appointment—Compensation.** Each judge of said Supreme Court is authorized to appoint one skilled stenographer, whose annual compensation shall be twelve hundred dollars, payable monthly out of the general fund of the State of Colorado. (Mills' Ann. Stat., 1912, § 1533.)

# CONNECTICUT

## SUPERIOR COURT.

**Appointment—Qualifications—Term.** The judges of the Superior Court at their annual meeting in June, 1904, and bi-ennially thereafter, shall appoint one skillful stenographer for each county, to be the official stenographer of the Superior Court therein for the term of two years from the first day of July succeeding his appointment, and until his successor is appointed and qualified, unless sooner removed by such judges for cause. (Rev. Gen. Stats. 1902, § 521; Original act Ch. 95, P. A. 1884.)

**Oath.** Every official stenographer before entering upon the duties of his office shall be sworn to faithfully perform them, and shall then be an officer of the court. (Id., § 522.)

**Duties.** Every official stenographer shall attend the terms and sessions of the Superior Court for which he is appointed and make accurate shorthand reports of all proceedings in said court, except arguments of counsel, and he shall, if the judge or judges of said court so direct, employ assistant stenographers to attend any term or session of said court, or any part thereof, as the judge or judges may desire. (Id., § 523.)

**Transcripts—Notes Filed.** Every official stenographer shall, when requested, furnish to the court, to the state's attorney or prosecuting attorney, and to any party of record, within a reasonable time a transcript of his official notes or such portion thereof as may be desired; and whenever the court may deem it necessary, it may order a transcript of the proceedings, or any part thereof to be filed with the clerk of the trial court, and all stenographic notes taken on the trial of any case shall within thirty days after the case is submitted be filed with the clerk, but for the purpose of transcribing said notes, the stenographer may at any time withdraw the same for a reasonable time. (Id., § 524.)

**Vacancies, How Filled.** In case of the death or resignation of the official stenographer, or his permanent inability to serve from any cause, the presiding judge of the Superior Court shall appoint a successor, and in case of his temporary absence, the presiding judge may appoint some competent person to act during such period. (Id., § 525.)

**Compensation—Per Diem—Transcript Fees.** Official stenographers shall each receive ten dollars per day when attending court, to be paid as court expenses. When assistant stenographers are employed, as authorized by law, each of said assistants shall in like manner receive ten dollars a day for each day when attending court; and all official and assistant stenographers shall be entitled in addition to the compensation hereinbefore provided to ten cents for each folio of one hundred words when transcribed from the original shorthand notes as provided by law. The fee for a transcript of said notes when made for the court, or the state's attorney, when acting in his official position, and one copy each to the plaintiff and defendant, shall, upon the certificate of the presiding judge having so ordered said transcript be paid as other court expenses; in all other cases by the party ordering the same, and shall be furnished within a reasonable time. (Id., § 4829.)

**Traveling Expenses in Certain Cases.** The official stenographer of the Superior Court for any county, or any assistant stenographer when acting in his stead, and the stenographer of any Court of Common Pleas, or his assistant, while attending court in a town other than that in which he resides, shall receive in addition to the compensation now allowed by law,

actual traveling expenses, the same to be taxed and paid as other court expenses. (Public Acts, 1911, ch. 269, approved Sept. 19, 1911.)

#### SUPERIOR AND DISTRICT COURTS OF WATERBURY.

**Appointment—Qualifications—Term.** The judges of the Superior Court at their annual meeting in June, 1903, shall appoint a skillful stenographer who shall be the official stenographer of the Superior Court at Waterbury for a term of one year from July 1, 1903, and at their annual meeting in June, 1904, and bi-ennially thereafter said judges shall appoint a skillful stenographer for the Superior Court at Waterbury, who shall hold his office for a term of two years, and until his successor is appointed and qualified, unless sooner removed by said judges for cause. By virtue of said appointment, said stenographer shall also be the official stenographer of the District Court of Waterbury. (Public Acts of 1903, Ch. 109.)

**Residence.** Said stenographer shall be a resident of Waterbury. (Id.)

**Duties and Compensation.** Said stenographer shall be sworn to the faithful performance of his duties, and shall have all the powers, and be subject to the same duties and receive the same compensation for attendance and transcripts as now provided by law for official stenographers of the Superior Court. (Id.)

#### COURTS OF COMMON PLEAS.

**Stenographer Called on Request of Parties.** The judge of any Court of Common Pleas, or of the District Court of Waterbury, upon the written request of any party to a cause in such court filed on or before the date on which said cause is assigned for trial, shall call in a competent stenographer to act during the trial. (Rev. Stats., 1902, § 526; Act of 1901.)

**Judge May Call in Stenographer.** Whenever the judge of the Court of Common Pleas, the Criminal Court of Common Pleas, the District Court of Waterbury, or the judge of any city, town or police court, shall deem it necessary, he may call in a competent stenographer to take the evidence in any civil action or criminal prosecution pending in the court over which he presides. Should necessity require, any stenographer called in under the provisions of this section, or of § 526, shall employ a competent assistant to act for him in said courts, who shall also be sworn and be subject to the same rules and duties as said stenographer so called in. (Id., § 527; Act of 1887.)

**Compensation.** The compensation of any stenographer called in for attendance and his fees for making copies shall be fixed by the judge at a rate not greater than the rate established for the official stenographer of the Superior Court, and his fees for copies when ordered by the judge or prosecuting attorney together with his compensation shall be taxed and paid in the same manner as the other expenses of maintaining and carrying on the business of said court. (Id., § 528; Act of 1887.)

**Stenographer Called by Agreement in Certain Courts.** Whenever in any Court of Common Pleas, city, borough, town or district court, or court of probate, the parties in any cause or matter pending therein, or their attorneys, shall in writing so agree, the judge of said court may call in any competent and disinterested person who is capable of acting as stenographer, to act as the official stenographer in the whole, or in any portion of any case as may be agreed upon in the manner aforesaid, and the compensation of such stenographer shall be taxed as a part of the costs in such case against the party who shall finally be defeated therein or if the case or

matter be pending in a court of probate, shall be paid by the parties in such proportion as the judge of said court shall decide; but in no case shall said compensation exceed that of the stenographer of the Superior Court. (Id., § 529; Act of 1887.)

**Powers and Duties.** Every stenographer called in and acting under the provisions of §§ 525, 526, 527 and 529, above quoted, shall be sworn and shall have the powers and be subject to the duties that are prescribed by law for the official stenographer of the Superior Court. (Id., § 530; Act of 1887.)

**Notes as Evidence.** Evidence taken by any such stenographer shall have the same effect, and be evidence to the same extent as evidence taken by an official stenographer of the Superior Court. (Id., § 531; Act of 1887.)

#### STATE REFEREES AND JUDGES SITTING IN CHAMBERS.

**Official Stenographer May Be Called to Act.** Whenever a judge of the Superior Court sitting in chambers, or a state referee, shall deem it necessary, said judge or referee may call upon the official stenographer in the county or district wherein any action pending before such judge sitting in chambers, or such referee is to be heard, to take the evidence therein. Such judge or referee shall have and may exercise all the powers now conferred by law upon a judge of the Superior Court when sitting as a court, with respect to transcripts of the official notes of such stenographer. (Public Acts of 1903, Ch. 146.)

**Duties and Compensation.** Such stenographer when so called upon, or a competent stenographer designated by him, shall attend such hearings, and shall have all the powers and be subject to the same duties and receive the same compensation for attendance, and fees for transcript of his official notes as now authorized by law for official stenographers of the Superior Court. Such compensation for attendance and fees for copy ordered by said judge or said referee, when duly approved, shall be paid by the clerk of the Superior Court for the county in which such action is heard in the same manner as other court expenses. (Id.)

## DELAWARE

### SUPERIOR COURT, COURT OF OYER AND TERMINER, AND COURT OF GENERAL SESSIONS.

**Qualifications—Appointment—Removal—Oath—Bond — Compensation — Transcripts—Assistants and Compensation of—Supplies.** There shall be attached to the superior court, the court of oyer and terminer, and the court of general sessions of the peace and jail delivery, a competent stenographer, who shall attend the sessions of said courts in the several counties of the state, and under the order and directions of the court, report all the evidence and proceedings. He shall be appointed by the court and shall be subject to removal at the pleasure of the court. He shall take an oath before entering upon his duties, and shall file a bond in the sum of two thousand dollars for the faithful discharge of his duties. He shall receive such sum as may be approved by the court, not to exceed two thousand dollars a year, the same to be paid by the state treasurer. Within sixty days after the completion of the trial, he shall make and file in the supreme court, a complete typewritten transcript in all cases appealed to the supreme court from the courts mentioned, and shall receive therefor such sum as may be approved by the court, not exceeding ten cents a folio, which sum shall be approved by the chief justice or the presiding judge, and paid by the state treasurer.

When any two of the lower courts mentioned in this act shall be in session at the same time, or whenever the court stenographer shall in the opinion of any of said courts, require assistance in the typewriting or stenographic work necessary to be done in connection with the business of said courts, the court stenographer may designate, with the approval of the court, one or more suitable and competent typewriters or stenographers, or both, who shall be sworn as other court officers are sworn, and whose acts shall have the same force and effect as if done by the official court stenographer. The said typewriters or stenographers so designated shall receive for his or their work such compensation as the court shall consider proper, provided that it shall not exceed the sum of one thousand four hundred dollars for any one year, and provided further that such sum shall cover also the supplies that may be necessary to be used in connection with the typewriting and stenographic work done by said courts. All payments from this appropriation to be made by the state treasurer upon the presentation of a bill bearing on its face the approval in writing of some one of the judges of said courts. (19 Del. Laws, Ch. 253, p. 493 (1891); as amended by 21 Del. Laws, Ch. 115, p. 259 (1898), and 23 Del. Laws, Ch. 59, p. 94 (1905), and 27 Del. Laws, Ch. 72, p. 188 (1913).)

## DISTRICT OF COLUMBIA

There are no statutory provisions covering the District of Columbia. In 1915 the District Attorney for the District of Columbia made a contract covering all criminal cases reported for the United States in Washington at 13 cents a folio for the original and 5 cents a folio for carbon copies. No per diem charge is allowed but all notes are transcribed.

The Corporation Counsel for the District of Columbia in the same year made a contract for reporting cases in the civil courts to which the District is a party at 14 cents a folio, with five carbon copies furnished free to the District, and 8 cents per folio (with five free carbon copies) in case one or more copies shall be sold to other parties.

For reporting in the civil circuit courts the standard rate is 25 cents for the original, and 35 cents for the original and one carbon, the cost being equally divided between the parties, but this rate is not always adhered to.

Practically all cases in court in which a reporter is employed require "daily copy," as do also all Congressional committee hearings. Occasionally notes are taken in court without an order for immediate transcript, for \$10 per diem.

For many years the rate for reporting hearings before committees of the House of Representatives was 25 cents per folio, and that for reporting Senate Committee hearings \$1.25 per printed page of about 550 words. These rates have been reduced to 15 cents per folio and \$1 per printed page, respectively.



# FLORIDA

## CIRCUIT COURTS.

**Appointment—Term—Duties—Fees in Advance—Compensation—Transcripts—Eligibility.** There shall be in each judicial circuit a reporter of testimony and proceedings in trials at law in the circuit court. He shall be appointed by the governor upon the recommendation of the circuit judge, and hold office during the pleasure of the governor. He shall upon the discretion of the judge report the testimony and proceedings upon the trial of any criminal case in the circuit court, and upon the written demand of the attorney for either party shall do likewise in the trial of any civil cause, but he shall not be required to attend any trial out of the county in which he may reside upon the demand of any attorney, unless such attorney shall deposit or secure his mileage and at least one day's per diem. He shall receive five dollars per day for attendance in the county in which he resides, and in other counties he shall receive six dollars a day for the time actually spent in reporting and in waiting upon the order of the judge or demand of an attorney to the case, and he shall receive mileage at the rate of five cents each way from his residence, and for each typewritten transcript furnished upon demand the sum of twelve and one-half cents a folio, and for each carbon copy, six cents a folio. His accounts per diem and mileage shall be certified by the judge, and, in civil cases, shall be taxed as costs, and he shall upon payment of his fees, furnish transcripts. His transcript when certified to by him shall be prima facie a correct statement of the evidence provided his certificate be acknowledged before a notary public, or some judicial officer. Females shall be eligible for this office. (Gen. Stats. 1906, §§ 1844-1849; Laws of 1903, Chap. 122, p. 61.)

## ESCAMBIA COUNTY.

**Appointment—Duties—Compensation.** The judge of the court of record is empowered to appoint in all civil cases pending in said court, when either of the parties to any such suit shall so request, and in all criminal cases pending in said court, when the defendant or the county solicitor shall so request, a competent stenographer, who shall report and transcribe the testimony and the charge of the court in any such case; the duties and compensation of such stenographer shall be the same as those prescribed by law for the official court reporters of the circuit courts in this state, and he shall be payable in the same manner and from the same source. (Local Laws, 1913, Ch. 6587, (No. 167), § 3.)

# GEORGIA

## SUPERIOR AND CITY COURTS.

**Appointment—Oath—Duties.** Each of the judges of the superior and city courts, in all circuits where there may be more divisions than one, whether the same be civil or criminal, shall appoint, and at pleasure remove, a reporter or stenographic reporter for their respective divisions of said superior or city courts of their respective circuits. Before entering upon the duties of his office, such reporter shall be sworn in open court to faithfully perform all the duties required under this division; and it shall be his duty to attend all sessions of the court for which he is appointed, and when directed by the judge as hereinafter set forth, exactly and truly to record or take stenographic notes of the testimony and proceedings in the case tried, except the arguments of counsel. (Code of 1910, § 4984, as amended by Laws of 1914, Ch. 433.)

**Duty in Felony Cases.** Upon the trial of all felonies the judge shall require the testimony to be taken down, and when so directed the court reporter shall take stenographic notes of the testimony and proceedings, except the arguments of counsel, and in case the jury return a verdict of guilty, the testimony shall be entered on the minutes of the court, or in a book kept for that purpose. (Code of 1910, Vol. 2, § 810.)

**Compensation.** The compensation of the stenographer for recording or taking stenographic notes and recording the evidence in such civil cases as may be agreed by counsel for plaintiff and defendant to be recorded, or in case of disagreement as aforesaid in such cases as the presiding judge may direct to be recorded, shall be at the rate of not to exceed ten cents per hundred words, to be fixed by the judge, which fee shall be paid by the parties to the agreement upon such terms as they may prescribe for themselves, and if no agreement is entered into as to the payment thereof, then in such manner as may be prescribed by the presiding judge. (Code of 1910, § 4985.)

**Same—Transcript Fees in Civil Cases.** The stenographic reporter for furnishing reports of evidence and other proceedings, in civil cases, shall be paid by the party requesting the same, at a rate not to exceed ten cents a folio. (Id., § 4986.)

**Same—Criminal Cases.** The compensation of the reporter, or stenographic reporter, for taking down testimony in the trial of such criminal cases as are required by law to be recorded, shall be \$15 per day, which sum shall be paid by the county treasurer or other officer having charge of the county funds of the county wherein such criminal cases shall be tried, on the certificate and order of said judge as to the number of days he has been employed, but not exceeding \$2500 shall be paid in any one year for work done in that year out of the funds of any one county, except in counties containing cities of over 150,000 inhabitants, in which excepted counties the board of county commissioners shall fix the compensation. In cases of conviction, the costs of reporting as provided in this section, shall be entered up against the defendant, on which judgment the clerk of the superior court shall issue execution, the money arising therefrom to be deposited in the treasury of the county where such conviction was had, to be held as other county funds are held. Such reporter or stenographer shall, for reports of evidence and other proceedings by him furnished, be paid by the party requesting the same, at a rate of not to exceed ten cents for each one hundred words. (Code, 1910, Vol. 2, § 1131, as amended by Laws 1914, Ch. 432.)

**Same—Certain Counties.** The compensation of the official stenographic reporters of the superior courts in all counties having therein a city with a population of not less than 39,000 nor more than 54,000 inhabitants shall be the sum of \$125 per month, to be paid out of the treasury of the counties in which such cities are located as the court expenses are paid, such compensation to be in full for all services of any kind properly chargeable to and to be paid out of the treasury of such counties. The compensation of the stenographic reporter in all the judicial circuits which now or may hereafter be established in this state having therein a city with a population of not less than 54,000 nor more than 75,000 inhabitants shall be the sum of \$150 per month, such compensation to be in full for all services of any kind properly chargeable to and to be paid out of the treasury of the counties in which said cities are located, as other court expenses are paid. (Code of 1910, § 5988.)

**Same—Certain Circuits.** In all counties in this state having cities with a population of not less than 23,000 nor more than 39,000 inhabitants according to the U. S. census of 1900 the compensation of the stenographic reporter of the judicial circuits in which said cities are situated shall be the sum of \$2500 per annum to be paid monthly and to be in full for all services of any kind properly chargeable to and to be paid out of the treasury of the counties in which said cities are located as other court expenses are paid. In all such counties the stenographic reporter shall turn over quarterly to the county treasurer of said counties all moneys collected by him for the reporting and transcribing of all civil cases in said superior court. Where a defendant is sentenced as for a felony it shall be the duty of said stenographic reporter to file with the clerk of the superior court a brief of the testimony had in said case without further compensation. (Id., § 5989, as amended by Laws of 1912, p. 72.)

**Same.** From and after January 1, 1912, the compensation of the stenographic reporter in all the judicial circuits which are now or may hereafter be established in this state having therein a city with a population of not less than 65,000 nor more than 100,000 inhabitants shall be the sum of \$200 per month, such compensation to be in full for all services of any kind properly chargeable to the counties in which said cities are located and to be paid out of the treasury of such counties as other court expenses are paid. (Laws of 1911, No. 203, p. 200.)

**Bills of Exceptions in Narrative Form.** In making up the brief of evidence required in motions for a new trial, the evidence shall be stated in narrative form, even if it has been taken down stenographically. (Code of 1910, § 6093.)

# HAWAII

## CIRCUIT COURT (First Circuit.)

**Appointment—Term—Compensation—Duties.** The judges of the first judicial circuit, or a majority of them, shall have the appointment and removal of as many shorthand reporters as there are divisions of the court. Such reporters shall be sworn officers of the court and hold office during good behavior coupled with efficient discharge of their duties. They shall be subject to the orders of the presiding judge of the division of the court to which assigned. (Laws of 1915, Act 88.)

**Duties—Transcripts, Fees for.** The duties of the shorthand reporters shall be to attend upon the court and write down all the testimony of the witnesses in shorthand, together with the proceedings and objections and exceptions of counsel, exclusive of argument, the rulings of the court, charge to the jury, and any other matter which the court may require him to report; he may be called upon during a hearing, by either party to the same, or by the court, to read aloud any portion of his notes theretofore taken by him, and he may be referred to at any time by the clerk of the court for the exact language of any orders from the bench. The reporter may charge not exceeding fifteen cents a folio of one hundred words for original copies of transcripts and seven and one-half cents per hundred words for carbon copies of transcripts prepared in their regular order for the purpose of appeals to the Supreme Court, and not exceeding twenty cents per folio for original copies and ten cents per folio for carbon copies when transcripts are prepared daily during the course of the trial. Fees must be paid by the party ordering same, and no reporter shall be required to perform any such service until his fees have been paid or the amount of the estimated cost deposited with the clerk of the court. (Laws of 1915, Act 88.)

**Qualifications.** No person shall be appointed to the position of official shorthand reporter of such court except upon satisfactory evidence of good moral character, and unless he shall be a citizen of the Territory of Hawaii, and without either (1) having had three years' experience as a court reporter, which fact shall be shown to the satisfaction of the judges, or of a majority of them, or (2) being first examined as to his competency by a committee of three persons. The test of competency shall be as follows: Ability to write for five consecutive minutes in the presence of the committee at the rate of at least one hundred and sixty words per minute on new matter and immediately read the same back without material error, and furnish a plain and accurate transcript of the same within a reasonable time thereafter. (Laws of 1915, Act 88.)

## CIRCUIT COURT (2d, 3d and 4th Circuits.)

**Appointment—Tenure—Duties.** Authority is hereby conferred upon each of the circuit judges of the second, third and fourth circuits to appoint a stenographer who shall be a competent shorthand reporter, to hold office until removed by the judge by whom he is appointed. Any of the said circuit judges may temporarily assign to any shorthand reporter appointed as aforesaid any appropriate duties in any court of said Territory other than the one in which he is located. (Act 208, Laws of 1915.)

Note: The salaries of the shorthand reporters of the first circuit are \$2,100 each; of the second circuit, \$1,800; of the third circuit, \$1,500; of the fourth circuit, \$1,800.

# IDAHO

## DISTRICT COURTS.

**Appointment—Qualifications.** There shall be appointed within and for each of the judicial districts of this state, by each district judge, a stenographic reporter, who shall be well skilled in the art of stenography, and capable of reporting the oral proceedings in court, verbatim. (Rev. Codes, 1908, § 3980.)

**Oath—Bond—Term—Salary—Traveling Expenses.** Said reporter shall take the oath required to be taken by judicial officers; give a bond to be approved by the judge of the district court, in the sum of five thousand dollars, conditioned for the faithful performance of his duties, which bond shall be filed in the office of the Secretary of State, hold his office during the pleasure of said judge, and shall receive a salary of two thousand five hundred dollars per annum to be paid in the same manner as the salaries of other state officers are paid. There shall be paid in addition to said salary, to each of the court reporters of the district courts, out of the state treasury, for each term of a district court held by the judge thereof, for the trial and disposition of causes and the transaction of business under the laws of the state, in other counties than that in which said court reporter resides, his actual and necessary expenses for traveling and attending each term. (Id., § 3981.)

**Duties as to Reporting—Waiver of.** The said reporter shall correctly report all oral proceedings had in said court and the testimony taken in all cases tried before said court, but the parties may, with the consent of the judge, waive the recording by such reporter of any part of the proceedings or testimony. (Id., § 3982.)

**Filing Notes.** The reporter shall file the stenographic records and reports made by him with the clerk of the district court of the county in which such report was taken and was tried. (Id., § 3983.)

**Transcripts—Fees for—For Poor Persons—As Evidence.** It shall be the duty of each reporter to furnish, on the application of the Attorney General, prosecuting attorney, or any party to a suit in which a stenographic record has been made, a typewritten copy of the record, or any part thereof, for which he shall charge in addition to his salary, a fee of seven and one-half cents per hundred words, to be paid by the party requesting the same, and to be taxed as costs in the case against the party finally defeated in the action: Provided, when such copy is requested on behalf of the State, or its attorney, or by a defendant in a criminal case or his attorney, and when after conviction the defendant in a criminal case shall satisfy the court by affidavit or otherwise, that he is unable by reason of his poverty to pay for such copy, so requested by himself or his attorney, the court reporter shall furnish such copy free of charge. Such copy shall constitute prima facie the minutes of the court, and may be used on all motions for new trials, review or appeal, when the minutes of the Court may be used. (Id. § 3984.)

**Delivery of Transcript in Thirty Days.** It shall be the duty of the reporter to deliver said copy within thirty days after being requested. (Id., § 3985.)

**Appointment of Deputy—Compensation of.** When owing to the absence, sickness or other disability of the regular reporter, or when the business of the court demands it, the Court may appoint a substitute or deputy court reporter to act in the place of the regular reporter during such absence,

sickness or other disability of the regular reporter, such substitute or deputy reporter to perform the same duties prescribed by law for the regular reporter, give such bond as is required by the court, take the same oath, and shall receive such compensation as may be allowed by the court, and when employed owing to the absence of such regular reporter, to be paid out of the salary of such regular reporter; but when such absence is on account of sickness then such compensation shall be paid out of the state treasury as the regular reporter's salary is paid: Provided, that such compensation shall only be paid for the time that such deputy reporter is actually engaged in such work; and, Provided further, that in all criminal cases where, in the opinion of the court, the notes of the court reporter should be extended for use upon the trial of the cause, or in civil cases where, in the opinion of the court, the services of a deputy reporter are required, the court may appoint an additional or substitute court reporter to aid the regular court reporter in reporting such cause, and who shall be paid a sum to be fixed by the court, to be paid as is the salary of the regular court reporter. When in the opinion of the court, or of the judge thereof, the services of one or more persons are required to assist in the making of transcripts of testimony, the court or judge may by order authorize the reporter to employ such persons as may be necessary to facilitate the work in order that transcripts may be prepared without delay. Such assistants shall be entitled to charge and receive for their services in the preparation of transcripts the fees allowed by law therefor, the same to be paid by the reporter from the money received by him for such work. (Id., § 3987, as amended by Chap. 41, Laws 1915.)

**All Fees Paid to the State.** All fees earned by any court reporter or his deputy under the provisions of this title in excess of those earned by assistants in the preparation of transcripts pursuant to § 3987, shall be paid to the state treasurer to be placed to the credit of the general fund of the state. Said reporter shall make a quarterly report to the state auditor of all fees earned by himself, his deputies and assistants, and said report shall be accompanied by a remittance of such excess fees. (Id., § 3988, as amended by Chap. 41, Laws of 1915.)

#### HEARINGS BEFORE REFEREE, ETC.

**Reporter May Be Ordered to Attend.** In all actions in the District Court which are triable by the Court, or in which a jury is waived, where the parties are numerous and the convenience of the witnesses and the ends of justice would be promoted thereby, the court, or the judge thereof at chambers, may at any time after the service is complete and the time for appearance has expired, order testimony taken at such time and place as shall be designated in such order, before the judge of said court or before a referee appointed by said court or the judge thereof, or before a special judge agreed upon by the parties to the action, and the testimony so taken shall be transcribed by the court reporter and transmitted, without findings, to the clerk of the court of the county where said action is pending, and shall be received in court as evidence in said action with the same force and effect as if taken upon a trial of said cause in open court. (Provision is made for the service of the order.)

The taking of testimony may be continued from day to day, and adjourned by order of the judge of the court, or by the referee or special judge before whom the testimony shall be taken; and the judge of said court shall make such order as he may deem proper as to payment of costs incurred in taking and transcribing such testimony. All objections made at the time to the relevancy or admissibility of evidence shall be noted, and

the same may be renewed in the District Court upon the final hearing. (Id., § 6086.)

#### BILL OF EXCEPTIONS.

**Transcript in Lieu Thereof.** Any party desiring to procure a review on appeal to the Supreme Court of any ruling of the District Court made during the trial, or the sufficiency of evidence to sustain the verdict or decision, in an action or special proceeding, may, in lieu of preparing, serving and procuring the settlement of a bill of exceptions as in this chapter provided, procure a transcript of the testimony and proceedings, including the instructions given or refused, and exceptions thereto, on the trial, or such part thereof as may be necessary, in the following manner: He shall first procure from the district judge an order directing the reporter to prepare said transcript or specified portion thereof, which order shall limit the time within which the reporter shall complete and lodge the same. He shall then file said order with the clerk of the District Court, and serve a copy thereof upon the reporter, paying to him at the same time such sums as he shall demand, as the estimated cost of transcribing such part of his notes and of the proceedings as may be desired, at the rate of ten cents per folio of 100 words, which fee shall be in full payment for all services of the reporter in preparing and certifying an original and four carbon copies of said transcript, and shall be covered into the state treasury as are other fees paid to the reporter, and any balance of the estimate shall be returned by the reporter to the party depositing the same, and said party shall likewise be liable to, and shall, on demand of the reporter, pay any deficiency not covered by said estimate. It shall be the duty of the reporter, upon service of said copy of order and receipt of his estimated fees, to forthwith prepare said transcript and to complete the same and lodge the original and copies with the Clerk of the District Court within the time allowed by said order, or within such further time as the District Judge may, by order, allow, and the reporter shall append to the transcript his certificate that the same is a true and correct copy of the testimony taken at the trial, or of such part thereof as is designated by the order.

Note: § 7946a, passed in 1915, is a statute similar to the above applying to criminal cases.

(After the lodging of said transcript and copies, the record is settled by the judge, after notice, as provided in this act, and when so settled said transcript shall have the force and effect of a bill of exceptions duly settled and allowed.)

Exhibits introduced in the trial may be certified to the Supreme Court by the clerk without incorporating the same in the transcript, or making any copies, unless said exhibits consist of some part of the public records, in which event the same shall be copied into the record at the appropriate place by the reporter, or a copy certified by the party having lawful custody of the records may be substituted and transmitted with the exhibits. (Id., § 4434; Laws of 1911, Ch. 119.)

**In re Appropriations.** No officer, employe or State board of this state, etc., shall enter into any contract or agreement creating any expense, or incurring any liability, moral, legal or otherwise, or at all in excess of the appropriation made by law for the specific purposes for which such expenditure is to be made, or liability incurred, unless written authority to make such expenditure or to incur such liability has been previously obtained from the State Board of Examiners of the State of Idaho. Any person or persons violating the provisions of this act shall be deemed guilty of a mis-

demeanor, and shall be subject to removal from the position held, by order of the Governor of the State of Idaho. Any indebtedness attempted to be created against the State in violation of the terms of this act, or any indebtedness attempted to be created against the State in excess of the appropriations provided for in this Act shall be void. (Laws of 1913, Ch. 193, p. 646.)

Note: The legislature makes an appropriation for the biennial period for the purpose of paying assistant reporters. In cases where such appropriation has been exhausted during the first year of the biennial period, during the second year of the period the reporter is confronted with the above section on the one hand, and the statutes and rules of the Supreme Court as to the delivery of transcripts on the other.

#### SUPREME COURT RULES. (Adopted June 29, 1911.)

**Transcript, How Secured.** Where in lieu of a bill of exceptions the appellant desires to obtain a reporter's transcript, as provided in § 4484 of Ch. 119 of the laws of 1911, application for an order of the District Judge directing the reporter to prepare such transcript, if not made before the appeal is taken, must be made and forthwith transmitted to the Judge upon the perfecting of such appeal; and upon such order being made it shall be filed forthwith with the Clerk of the District Court from which the appeal is taken, and a copy thereof shall be served by appellant upon the reporter, who shall thereupon furnish the party an estimate of the cost of such transcript, and upon receipt of such estimate the appellant shall forthwith pay such fees to the reporter. (Rule 76.)

**Extension of Time.** In no case shall the time granted for the preparation of the transcript of the reporter's notes, under the provisions of § 4434, as enacted by the 1911 session of the legislature, exceed forty days, including any and all extensions granted for the purposes therein specified. Provided, that in extraordinary cases, or in case of an unusually large record, or in the case of the sickness of the reporter, a party desiring an extension of time, may, upon filing affidavits showing the cause for the same and serving the same on the adverse party and giving notice of the time and place of hearing, which shall not be less than two days, and upon such hearing and good cause appearing, be granted an extension or extensions, not exceeding in the whole an additional forty days. (Rule 77.)

**Specifications for Transcript.** The Clerk of the District Court shall in the preparation of transcript on appeal, under the provisions of § 4820a, Rev. Codes, Ch. 117 of the 1911 Session Laws, use white typewriter paper of the standard legal size, unglazed and of approximately 2½ lbs. weight to the ream, leaving a margin of two inches at the top and one and a half inches at the left, and shall use black record ribbon and black carbon paper. The written page shall be double spaced and the pages shall be numbered at the bottom and the folio numbers shall be written on the left margin, every ten lines being marked as a folio. Four copies may be made with carbon sheets, but the carbon copies must be plain and legible and no carbon sheet shall be used after it is so worn as to blur or leave any letters indistinct. All transcripts shall be bound by securely fastening the same at the top, suitably stapled or tied, and covered with substantial cardboard or other equivalent flexible covers, and the same shall be bound in volumes not to exceed 400 sheets; provided a volume may be made to contain 500 pages where the same will include an entire transcript or the entire remainder of the transcript. (Rule 78.)

**Reporters' Transcripts to Conform to Above, Except.** All transcripts made by court reporters under the provisions of § 4434, as comprised in Ch.



119 of the Session Laws of 1911, shall be made in all respects in accordance with the provisions and requirements of the foregoing Rule 78, except that the reporter shall not number the folios. (Rule 79.)

**Penalty for Non-Compliance.** Transcripts not prepared in accordance with Rules 78 and 79 shall not be filed by the Clerk of the Supreme Court, but shall be returned by him to the Clerk of the District Court from whom he received them, for proper preparation, and if reporters' transcripts have not been made in accordance with the requirements of these rules and of the statute, the reporter who made the same shall be required to forthwith prepare other transcripts in compliance with these rules, and no compensation whatever shall be allowed to either stenographer or clerk for making new transcripts in order to comply with these rules. A wilful failure to substantially comply with the statute and these rules shall subject the reporter or clerk, as the case may be, to liability for any costs which may be incurred by either party to the action on account of such failure or neglect. (Rule 81.)

# ILLINOIS

## CIRCUIT COURTS.

**Appointment—Term—Stenographer Pro Tem.** The several judges of the circuit courts are authorized to appoint a shorthand reporter for their respective courts, whose duty shall be as hereinafter specified. The reporter so appointed shall hold his position during the pleasure of the judges so appointing him, not, however, to extend beyond the time the judges making such appointment shall be elected for: Provided, however, that in case of the absence or disability of the reporter so appointed the presiding judge may appoint any other reporter to act in his place during such absence or disability; and provided, further, that in counties the territory of which is co-extensive with the territory of one circuit, there shall not be appointed after the passage of this act any official reporters, by any judge of said county, except when authorized by the county board, and their salary or per diem be fixed by said board. (Revised Statutes, 1903, Chap. 37, § 82a as amended by Laws 1905, page 147.)

**Duties—Transcripts—Compensation—Taxation of Fees.** The reporter shall cause full phonographic notes of the evidence in all trials in the court for which he is so appointed to be taken down, and one transcript of the same, if desired by either party to the suit, or by their attorney, or by the judge of the court, to be forthwith correctly made and furnished to the party so desiring it. The compensation of the reporter for taking such phonographic notes shall be eight dollars per day for each day court is in session. The presiding judge of the court shall furnish to said reporter at the close of each term of court a certificate showing the amount per diem due him, and upon presentation to the county treasurer of such county he shall pay the same out of any funds of such county in his hands. Said reporters shall be allowed to charge not to exceed ten cents per hundred words for making transcripts of said shorthand notes, to be paid in the first instance by the party on whose behalf such transcript is ordered, and allowed and taxed as costs in the suit, and the transcript when so paid for by the party ordering it and the charges for the same are taxed as costs, the same shall be filed and remain with the papers in the cause: Provided, however, that when the judge trying the case shall, of his own motion, order a transcript of said shorthand notes as hereinbefore provided, he may direct the payment of the charges therefor and the taxation of the same as costs in such manner as to him may seem just: Provided, always, that the charges for making but one transcript may be taxed as costs; the party first ordering the transcript shall have the preference, unless it shall be otherwise ordered by the court. (Revised Statutes, 1903 (Hurd), Chap. 37, § 82b as amended by Laws 1905, page 147, and Laws 1909, page 164.)

**Oath.** The reporter shall, before entering upon the duties of his office, take and subscribe the official oath to faithfully discharge the duties of his office to the best of his knowledge and ability. (Revised Statutes, 1903, Chap. 37, § 82c.

### COOK COUNTY (CHICAGO).

The Circuit and Superior Courts of Cook County (Chicago) fall within the provision of paragraph 1 of the Act: "There shall not be appointed after the passage of this act, any official reporters, by any judge of said county, except when authorized by the county board, and their salary or per diem fixed by said board." There are no official reporters in the Chicago courts appointed under the provisions of the above act.

Note: In 1869 there were four acts passed by the legislature providing for stenographic reporters in the Superior Court of Chicago, the Circuit Court of Cook County, the Recorder's Court of the City of Chicago, and the County Court of Cook County, and the Circuit Courts for the 9th and 18th judicial circuits. These acts were held unconstitutional as class legislation, and so are not included in this work.

### COUNTY COURTS.

**Appointment—Term—Stenographer Pro Tem.** That the several judges of the county courts in this state, in counties having a population not more than two hundred thousand, be, and they are hereby authorized to appoint a shorthand reporter for their respective courts, whose duties shall be as hereinafter specified. The reporter so appointed shall hold his position during the pleasure of the judge appointing him; not, however, to extend beyond the time the judge making such appointment shall be elected for: Provided, however, that in case of the absence or disability of such reporter, so appointed, the judge may appoint any other reporter to act in his place during such absence or disability. (Rev. Stat. 1911, Ch. 37, § 215e, page 699.)

**Duties and Compensation.** The said reporter shall take full stenographic notes of the evidence in all trials in the court, for which he is appointed, in all cases which are appealable directly to either the Appellate or Supreme Court, and furnish forthwith one transcript of the same correctly made to either party to the suit, upon the request of such party or his attorney. The compensation of said reporter for taking such stenographic notes shall be fixed by the judge appointing him at any sum not exceeding five dollars per day for each day of his actual attendance upon the trials of such cases as are appealable direct to either the Appellate or Supreme Court. The judge of the court shall furnish to said reporter, at the close of each term of court, a certificate showing the amount due him at such per diem, and upon presentation to the county treasurer of such county, the county treasurer shall pay the same out of any funds of such county in his hands. Said reporters shall be allowed to charge not to exceed fifteen cents per hundred words, said amount to be fixed by the court, for making transcript of said stenographic notes to be paid in the first instance by the party on whose behalf such transcript is ordered and allowed and taxed as costs in the suit, and the transcript when so paid by the party ordering it and the charges for the same are taxed as costs, the same shall be filed and remain with the papers in the case: Provided, always, that the charge for making but one transcript may be taxed as costs, the party first ordering the transcript shall have the preference, unless it shall otherwise be ordered by the court. (Id.)

**Oath.** Said reporter shall, before entering upon the duties of his office, take and subscribe the official oath to faithfully discharge the duties of his office to the best of his knowledge and ability. (Id.)

# INDIANA

## CIRCUIT, CRIMINAL AND SUPERIOR COURTS.

**Appointment—Duties.** The judge of each circuit, criminal or superior court of each and every county of this state, shall appoint an official reporter whose duty it shall be, whenever required by such judge, to be promptly present in said court, and to take down in shorthand the oral evidence given in all cases, including both questions and answers, and to note all rulings of the judge in respect to the admission and rejection of evidence, and the objections and exceptions thereto. (Burns' Revised Statutes, 1914, § 1685.)

**Qualifications.** No person shall be ineligible to such office of shorthand reporter on account of sex. The judge shall not appoint his son or daughter as such reporter. (Id., § 1686.)

**Oath.** At the time of appointment, such reporter shall take an oath before some officer empowered to administer oaths, to faithfully perform his or her duties, as such official reporter. (Id., § 1687.)

**Removal—Vacancies, How Filled.** Such reporter may, at any time, be removed by the judge of the court for which he was appointed, and in every case of vacancy in the office of official reporter, it shall be the duty of the judge of such court to fill the vacancy as soon after its occurrence as practicable. (Id., § 1688.)

**Transcripts—Fees in Advance.** Whenever in any cause, such reporter shall be requested to do so, he shall furnish to either party a transcript of all or any part of said proceedings required by him to be taken or noted, including all documentary evidence, and it shall be his duty to furnish the same written in a plain legible longhand or typewriting as soon after being requested to do so as practicable, and he shall certify that it contains all of the evidence given in the cause: Provided, that the reporter may require payment for such transcript, or that the same be satisfactorily secured, before he proceeds to do the work required of him. (Id., § 1689.)

**Compensation.** The compensation of such official reporter shall be as follows: He shall be allowed a compensation of not more than five dollars per day for each day required by such judge to be in attendance upon the court as such official reporter; Provided, that in all judicial districts, whether for circuit or superior courts, composed of one or more counties, one of which counties having a population of more than 80,000\* as shown by the last preceding United States census, which judicial districts have more than three and less than six judges, the compensation of each of such reporters shall be eighteen hundred dollars per annum, payable out of the county treasury in installments according to the terms of such courts. Such compensation shall be certified, audited and paid in like manner as is provided by law for the payment of other officers for attending upon the court. Such official reporter may also collect as fees ten cents per folio of one hundred words, for making and furnishing transcripts of his shorthand notes of testimony, to be paid by the party requiring such transcript: Provided, that if any such reporter, appointed and acting under the provisions of this act, shall charge, or charge and receive, or receive any compensation in excess of that provided in this act, shall be guilty of a misdemeanor and upon conviction shall be fined a sum not less than ten dollars nor more than one hundred dollars. (As amended, Acts 1913, p. 601; Burns' Revised Statutes, 1914, § 1691.)

\*Applies to Lake county only.

## MARION COUNTY PROBATE COURT.

**Appointment—Duties—Salary—Term.** The judge of such probate court shall appoint a court stenographer whose duties, salary and term shall be regulated in the same manner as the court stenographer of the circuit court. (Burns' Revised Statutes, 1914, § 1629.)

## GRAND JURY.

**Appointment—Salary—Duties—Oath of Secrecy.** The grand jury must select one of its number as clerk, who must take minutes of the proceedings, except the votes of the individual members on the finding of an indictment, and also of the evidence given before the grand jury, which shall be preserved for the use of the prosecuting attorney: Provided, however, that such grand jury may by unanimous vote and the consent of the court employ a stenographer at not to exceed five dollars per day, to take the minutes and evidence under the supervision of such grand jury and the clerk selected by it. Such stenographer before entering upon his or her duties shall subscribe to an oath, to be administered by the clerk of such court, that he or she will in no way reveal any of the proceedings had before such grand jury. (Burns' Revised Statutes, 1914, § 1964.)

## POOR PERSONS—TRANSCRIPT FOR.

**Court May Order—Paid by County.** That any poor person desiring to appeal to the supreme court or appellate court of this state from the decision of any circuit court or criminal court or the judge thereof, in criminal cases, and not having sufficient means to procure the longhand manuscript, or transcript of the evidence taken in shorthand, by the order or permission of any of said courts or the judge thereof, the court or judge thereof shall direct the shorthand reporter to transcribe his shorthand notes of evidence into longhand, as soon thereafter as practicable, and deliver the same to such poor person; Provided, the court or the judge thereof is satisfied that such poor person has not sufficient means to pay said reporter for making said longhand manuscript or transcript of evidence, and such reporter may charge such compensation as is allowed by law in such cases for making and furnishing said longhand manuscript, which service of said reporter shall be paid by the court or judge thereof out of the proper county treasury. (Burns' Revised Statutes, 1914, § 1693.)

# IOWA

## DISTRICT COURTS.

**Appointment—Duties.** Each judge of the district court shall appoint a shorthand reporter who shall, upon the request of either party in a civil or a criminal case, take and report in full the oral evidence and proceedings in the case, and perform all duties required of him on the trial, as provided by law. (Code of 1897, § 245.)

**Oath—Attendance—Removal.** Such reporter shall take an oath faithfully to perform the duties of his office, which shall be filed in the office of the clerk. He shall attend such sessions of the court as the judge who appointed him may direct, and may be removed by the judge making such appointment. (Id., § 246.)

**Compensation.** Shorthand reporters of the district courts shall be paid eight dollars per day for each day's attendance upon said court, under the direction of the judge, out of the county treasury where such court is held, upon the certificate of the judge holding the court; and in case the total per diem of each reporter and his substitute shall not amount to the sum of \$1,600 per year, the judge appointing him shall at the end of the year apportion the deficiency so remaining unpaid among the several counties of the district, if there be more than one county in such district, in proportion to the number of days of court actually held by such judge in such counties, which apportionment shall be by him certified to the several county auditors, who shall issue warrants therefor to said reporter, which warrants shall be paid by the county treasurers out of any funds in the treasury not otherwise appropriated. Shorthand reporters shall also receive eight cents per hundred words for transcribing their official notes, to be paid for in all cases by the party ordering the same. If a defendant in a criminal cause has perfected an appeal from a judgment against him and shall satisfy a judge of the district court from which the appeal is taken that he is unable to pay for a transcript of the evidence, such judge may order the same made at the expense of the county where said defendant was tried.

Where a shorthand court reporter is required, in the discharge of his official duties, to leave the county of his residence or leave the city or town of his residence to perform such duties, he shall be paid his actual and necessary hotel and living expenses not to exceed the sum of three dollars per day and transportation expenses as shall be incurred, not exceeding in all two hundred dollars per year, which account shall be itemized and approved by the presiding judge of the district court and certified to the county auditor of the county in which such expenses are incurred, and shall be paid in the same manner as the per diem of such reporter is paid. (Supplemental Supp. to Code, 1915, § 254a2.)

**Reporting Fee Taxed as Costs.** A charge of six dollars per day for reporting in all cases, except where the defendant in a criminal case is acquitted, shall be taxed as part of the costs in the case by the clerk of the court and paid into the county treasury when collected. (Supp. to Code, 1913, § 254a3.)

**Notes or Transcripts as Evidence.** The original shorthand notes of the evidence, or any part thereof, heretofore or hereafter taken upon the trial of any cause or proceeding, in any court of record of this state, by the shorthand reporter of such court, or any transcript thereof, duly certified by such reporter, when material and competent, shall be admissible in evi-

dence on any retrial of the case or proceeding in which the same were taken, and for the purposes of impeachment in any case, and shall have the same force and effect as a deposition, subject to the same objections so far as applicable. It shall be the duty of any such reporter, upon demand by any party to any cause or proceeding, or by the attorney of such party, when such shorthand notes are offered in evidence, to read the same before the court, judge, referee or jury, or to furnish to any person when demanded a certified transcript of the shorthand notes of the evidence, of any one or more witnesses, upon payment of his fees therefor. When the reporter taking such notes in any case or proceeding in court has ceased to be the reporter of such court, any transcript made by him therefrom, and sworn to by him before any person authorized to administer an oath as a full, true and complete transcript of the notes of the testimony of the witness a transcript of whose testimony is demanded, shall have the same force and effect as though duly certified by the reporter of said court. When any exhibit, record, or document is referred to in such shorthand notes or transcript thereof, the identity of such exhibit, record or document, as the one referred to by the witness, may be proven either by the reporter, or any person who heard the evidence of the witness given on the stand. No portion of the transcript of the shorthand notes of the evidence of any witness shall be admissible as such deposition, unless it shall appear from the certificate or verification thereof that the whole of the shorthand notes of the evidence of such witness, upon the trial or hearing in which the same was given, is contained in such transcript, but the party offering the same shall not be compelled to offer the whole of such transcript. (Id., § 245a.)

**Report of Trial—Certificate—Bill of Exceptions.** In all appealable actions triable by ordinary or equitable proceedings, any party thereto shall be entitled to have reported the whole proceedings upon the trial or hearing, and the court or judge shall direct the reporter to make such report in writing or shorthand, which shall contain the date of the commencement of the trial, the proceedings impaneling the jury, and any objections thereto with the rulings thereon, the oral testimony at length, and all offers thereof, all objections thereto, the rulings thereon, the identification as exhibits, by letter or number or other appropriate mark, of all written or other evidence offered, or by sufficient reference thereto, made in the report, to make certain the object or thing offered, all objections to such evidence, and the rulings thereon, all motions or other pleas orally made and the rulings thereon, the fact that the testimony was closed, the portions of arguments objected to, when so ordered by the court, all objections thereto with the rulings thereon, all oral comments or statements of the court during the progress of the trial, and any exceptions taken thereto, the fact that the jury is instructed, all objections and exceptions to instructions given by the court on its own motion, the fact that the case is given to the jury, the return of the verdict and action thereon of whatever kind, and any other proceedings before the court, judge or jury which might be preserved and made of record by bill of exceptions, and shall note that exception was saved by the party adversely affected to every ruling made by the court or judge. Such report shall be certified by the trial judge and reporter, when demanded by either party, to the effect that it contains a full, true and complete report of all proceedings had that are required to be kept, and, when so certified, the same shall be filed by the clerk and, with all matters set out or identified therein, shall be a part of the record in such action, and constitute a complete bill of exceptions. But on a trial before a jury it shall not be necessary to take down arguments of counsel or

statements of the court, except his rulings, when not made in the presence of the jury. (Code of 1897, § 3675.)

**Exceptions to Instructions Noted.** All instructions requested or given shall be filed by the clerk and be a part of the record, and if the giving or refusal of an instruction is excepted to, it may be noted by the shorthand reporter, and no reason for such exception need be given. (Id., § 3707.)

Note: The words "and no reason for such exception need be given" are probably by implication, but not by direct reference, repealed by Ch. 289, Acts 35th G. A., 1913.

**Transcript Fees Taxed as Costs.** The fees of shorthand reporters for making transcripts of the notes in any case or any portion thereof, as directed by any party thereto, shall be taxed as costs, as shall also the fees of the clerk for making any transcripts of the record required on appeal, but such taxation may be revised by the supreme court on motion on the appeal, without any motion in the lower court for the retaxation of costs. (Code of 1897, § 3875.)

**Transcript a Part of the Record on Appeal.** The translation of the original notes of the shorthand reporter, certified by him to be true and correct, shall constitute a part of the record, and shall be sent up (to the Supreme Court) in its original form in lieu of a transcript thereof when a transcript of the evidence is required (As distinguished from an abstract as required by other sections—Ed.), and shall be returned to the clerk of the court of the proper county after the cause has been determined by the supreme court. (Id., § 4122.)

**Taxation of Costs in Supreme Court.** The court shall also tax the costs of any translation of the shorthand notes filed as provided in this chapter, and also any translation of the shorthand notes which has been made of record in the court below, upon the certificate of the clerk of such court as to the amount of such costs. (Supp. to the Code, 1913, § 4142.)

**Same Provisions in Criminal Cases.** All the provisions relating to the mode and manner of the trial of civil actions, report thereof, translation of the shorthand reporter's notes, the making such report and translation a part of the record, and in all other respects, apply to the trial of criminal actions. (Code of 1897, § 5371.)

## SUPERIOR COURTS.

**Appointment—Duties—Compensation.** The judge of each superior court may appoint a shorthand reporter. All provisions relating to shorthand reporters and their duties in the district court, in so far as applicable in every respect, shall govern, except the compensation shall not exceed five dollars a day for the time actually employed. (Code of 1897, § 275.)

**Exception—(Cedar Rapids).** In all cities which are not county seats, having a population of 25,000 or more, in which superior courts are established, the compensation of the shorthand reporter in such court shall be eight dollars a day for the time actually employed. (Supp. to the Code, 1913, § 280-d; Acts 34th G. A. (1911), Ch. 13.)

## MUNICIPAL COURTS.

**Appointment—Duties—Compensation.** Each judge of the municipal court may appoint a shorthand reporter. All provisions relating to shorthand reporters and their duties in the district court, in so far as applicable, shall govern, except their compensation, which shall be six dollars per day for the time actually employed and shall be paid one-half by the county and



# The Legality of the Adoption of the Report of the Committee on Rates and Charges

(Some question having been raised concerning the legality of the course recommended in the report of the Committee on Rates and charges, read at the San Francisco Convention, the chairman of that Committee, Mr. G. W. Burgoyne has procured the following decision from Mr. John S. Miller of Chicago, an attorney of nationwide reputation in such matters.)

Dear Sir:

Replying to your request for my opinion upon the question whether the action of your Association in adopting the report, which you sent to me, of your Committee on Rates and Charges, is in violation of any statutes, Federal or State, I beg to say:

As each of the states has its own statute against so-called trusts and monopolies, you have suggested to me that perhaps a consideration of the laws of Massachusetts, New York and Illinois, might suffice, in view of the time that would be required to examine and consider the statutes of all the states. It will be necessary or convenient for me to consider the statutes of some of the other states also; and the statutes of the states so suggested and considered. I think fairly well illustrate the character of, and for the most part, the provisions generally contained in statutes of that kind throughout the Union. The decisions of courts throughout the country upon the construction and application of such laws are not altogether uniform or harmonious, nor is the state of decision upon them altogether settled or stable. This makes it necessary that lawyers express positive opinions upon such questions with some caution and reserve.

My opinion thus expressed is that the action of your Association in adopting such report, as stated to me in your communications, is not in violation of any of the statutes above referred to.

1. The so-called Anti-Trust Statutes in question of the states referred to, and generally of the other states, with perhaps a few exceptions, are by their terms concerned with the manufacture, production and dealing in ARTICLES OF TRADE, MERCHANDISE OR COMMODITIES WHICH ARE BOUGHT AND SOLD. These terms do not expressly include labor or personal services and the trend of decision in the courts is that such statutes do not apply to or forbid agreements regulating or fixing or maintaining wages or charges for personal labor or services. The question has most frequently arisen with respect to agreements among members of labor unions, and it is settled in the courts of the states above mentioned, and I think generally by the modern decisions of the courts of the entire country, that agreements among workmen to fix, maintain or increase wages are lawful and proper. The cases where this question has been considered and decided with respect to agreements fixing or maintaining rates of charges for personal services entered into among others than members of labor unions are not numerous. I do not see, however, why, in construing and applying such statutes, the same rule does not apply generally to cases of fixing rates of charges for

personal services in the exercise of any occupation or calling, and so to the case of the action of your Association in question. And there are some well considered cases in effect so holding. The Supreme Court of Iowa has held that an agreement, combination or understanding among physicians and surgeons to fix and maintain a scale of fees and charges for their professional services, was not within the Anti-Trust Act of that state or unlawful. *Rohlf v. Kasemeier*, 140 Iowa, 182.

The Supreme Court of Minnesota has held that a rule adopted by the members of the Duluth Board of Trade fixing the rates of commission to be charged by its members is not within the Anti-Trust law of that state but is lawful. In *Queen Insurance Co. v. State*, 80 Texas, 250, the Supreme Court of Texas recognized that agreements among professional men to fix or maintain their rates of charge for their services, as well as among laborers, was not within the Anti-Trust Act of that state or unlawful. I have found no decisions under the Anti-Trust Statutes of any state which lay down a different rule. In 1892 the Supreme Court of Illinois, in the case of *More v. Bennett*, 40 Ill., 63, held that an agreement among the members of an association of stenographers in the City of Chicago, to abide by and observe a schedule of rates for stenographic work adopted by the association, was against public policy and invalid and incapable of enforcement in the courts—the court there conceiving that the regulation by agreement of the prices for such services was obnoxious to the common law rule against restraint of trade. This decision has not met with favor in courts of some other states, and would seem to be inconsistent with the later decisions of the same court, upholding as lawful the agreements of workmen to fix and maintain and increase the wages for their services. That case, however, did not involve, nor did the court consider, any statute of the state against trusts or combinations in restraint of trade. It was not a criminal or penal case, and involved no question of criminal or penal liability, but involved the question whether a member of the association was liable in a civil suit to another member, for damages for violation of the agreement to observe the schedule of rates. I do not regard it as in conflict with the opinion I here express.

2. I am also of the opinion that the action of your Association does not violate the Federal Anti-Trust Acts. In the first place, those acts are concerned only with interstate and foreign commerce; and if the reporting work or business in question of your members includes any interstate commerce at all, it must be a small and inconsiderable part thereof. The furnishing of transcripts or copies thereof across state lines might, in some cases perhaps, be regarded as in some sense interstate commerce. But with respect to them, as I understand it, it is the labor expended in their production that is charged and paid for; and if there is any element of sale of an article or commodity at all, it must be trivial. The so-called Clayton Anti-Trust Act of October 14, 1914, provides that “the labor of a human being is not a commodity or article of commerce”, and that nothing contained in the Anti-Trust laws shall be construed to forbid the existence and operation of labor organizations instituted for the purposes of mutual help.

Very truly yours,

(Signed) JOHN S. MILLER.

one-half by the city as provided in this act. \* \* \* The transcript fees paid reporters will be the same as in the district court, and may be taxed as part of the costs on appeal. (Supplemental Supp. to Code, 1915, § 694-c49.)

#### GRAND JURY.

**Appointment—Compensation.** In all counties having a population of more than 50,000 inhabitants, the court, may, if it deems necessary, appoint as clerk of the grand jury a competent shorthand reporter, and such clerk shall receive such compensation as may be fixed by the court at the time of the appointment, but said compensation, in counties having a population of less than 75,000 inhabitants shall not exceed four dollars per day for each day actually and necessarily employed in the performance of the duties herein defined. In all counties having a population or more than 75,000 inhabitants, such clerk shall receive as compensation an annual salary of \$1,500. (Supp. to the Code, 1913, § 5256; Acts 35th G. A. (1913), Ch. 313.)

#### CORONER.

**Appointment—Compensation—Oath.** For the purpose of preserving the testimony of such witnesses, and all acts and doings of the coroner and jury, the coroner may appoint a shorthand reporter at a compensation not to exceed fifty cents per hour, for time actually employed in any inquest or investigation, and for extending the notes, and when such reports are extended into longhand by the said shorthand reporter and certified to by the coroner and said reporter to the effect that they contain a full, true and complete report of all proceedings, they shall be the official record of the said inquest or investigation. The said shorthand reporter shall before entering upon his duties as such reporter, take an oath to be administered by the coroner, that he will faithfully take down in shorthand the evidence as it is given by the witnesses at such inquest or investigation, and that he will correctly extend the same into longhand. (Supp. to the Code, 1913, § 520.)

#### PRELIMINARY HEARINGS.

**Appointment—Cost Paid by Parties.** By agreement of the parties or their attorneys, the magistrate may order the examination taken down in shorthand and certified substantially in the manner provided for taking depositions by a stenographer, but the cost thereof shall not be taxed against the county. (Code of 1897, § 5227.)

#### DEPOSITIONS.

**May Be Taken in Shorthand.** The deposition may be taken in shorthand, in which case the certificate of the person taking it on notice or commission must show that the testimony of the witness was correctly taken down in shorthand, and was correctly extended, and that the notes of his testimony or such extension thereof was read over to the witness, and signed by him and sworn to, if within the state before a person authorized to administer oaths, and if without the state one of the persons authorized to take depositions outside of the state, and such extension, together with the shorthand notes, if signed and sworn to, must be returned as the deposition. Any one taking depositions in shorthand shall first take and subscribe an oath to take down and transcribe correctly such testimony, and shall certify that his translation thereof is full, true and complete. (Code of 1897, § 4702.)

## REFEREES.

**Appointment—Bill of Exceptions Unnecessary.** The referee shall sign any true bill of exceptions taken to any ruling by him made in the case upon the demand of either party, who shall have the same rights to obtain such bill as exists in the court, which bill shall be returned with the report, but no bill of exceptions is necessary to preserve or make of record any matter taken or noted down by the official shorthand reporter of the court, or one appointed by it or the referee, or agreed upon by the parties, and whose report is certified by such reporter and referee to be a full and true report of all the proceedings had, which shall be filed with the referee's report, and the whole be a part of the record. Said reporter shall be governed by the law relating to official reporters. (Code of 1897, § 3742.)

## KANSAS

## DISTRICT COURTS.

**Appointment—Term.** The judges of the district courts of the state of Kansas may each, in his discretion, appoint a stenographer, who shall act as official reporter and be a sworn officer of the court, and shall hold his office during the pleasure of the judge appointing him. (Gen. Stats., 1909, § 2400.)

**Qualification—Examination—Certification.** No person shall be appointed to position of official reporter of any court in this state without first being examined as to his competency by at least three members of the bar, practicing in said court, such members to be designated by the judge of said court. The committee of members of the bar so designated shall, upon request of the judge of said court, examine any person as to his qualifications whom said judge may wish to appoint as official reporter; and no person shall be appointed to such position upon whose qualifications such committee shall not have reported favorably. The party examined must write, in the presence of said committee, at the rate of at least one hundred and fifty words per minute for five consecutive minutes, upon matter not previously written or known to him. If he pass such examination satisfactorily, the committee shall furnish him with a written certificate of the fact, signed by a majority of the members of the committee, a copy of which certificate shall be filed among the records of the court in each judicial district. (Id., § 2401.)

**Oath.** Before entering upon the duties of his office, such stenographer shall take and subscribe the official oath prescribed by law, which oath shall be administered by the judge of said court. (Id., § 2402.)

**Duties—Not to Act as Attorney.** It shall be the duty of any stenographer so appointed to attend upon the court at each term, when required by the judge thereof, and to take, under the direction of the judge of the court, full stenographic notes of the evidence and oral proceedings in every case tried in said court that the judge thereof shall direct, or any party thereto may request. Said stenographer shall file the original notes taken in each case in such place as by the court directed, and said notes shall be at all times under the direction of the judge of said court, and said

stenographer shall turn over to his successor in office all such original notes; and it shall be the further duty of said stenographer to furnish to either party to such action, wherein the testimony or proceedings are so taken, a transcript of all or any part of said testimony or oral proceedings, upon the payment to him of the fee hereinafter prescribed. No authorized appointed stenographer for the district court shall appear or advise as attorney or counselor in any case in any court within the state of Kansas. (Id., § 2403, as amended by Laws 1915.)

**Compensation and Fees.** Court stenographers for the district court shall be allowed as compensation for their services a salary of twelve hundred dollars per annum, payable from the state treasury in monthly installments at the close of each month. A stenographer's fee of two dollars shall be taxed as costs for each day during trial in each and every case wherein such stenographer is used, which stenographer's fee of two dollars shall, when collected as costs by the district clerk, be paid into the state treasury in quarterly installments at the close of each quarter. Court stenographers shall also be allowed to receive the sum of eight cents per folio of one hundred words for each and every transcript and three cents per folio for carbon copies, which sum of eight cents per folio shall be paid in all cases by the party ordering the same: Provided, That the party paying for such transcript may, by attaching to them the receipt of such stenographer, have the amount paid for such transcript taxed as costs in the court to which said cause is taken by appeal or on petition in error, which said costs of said transcript shall be taxed to and be paid by the losing party in said court to which said cause is taken; Provided, That this section shall not apply to any court stenographer whose compensation may be otherwise provided for without the payment of any part thereof from the state treasury. (Id., § 2404.)

**Report to Auditor.** That when the quarterly remittances of stenographers' fees by the clerks of district courts of this state are forwarded to the treasurer of state, as provided by law, it shall be the duty of said clerks to make a formal certified report of said fees to the auditor of state. Said report shall show what fees have been collected, by whom paid, and the amount remitted to the treasurer of state. When no fees have been collected during any quarter, it shall be the duty of the said clerk to make certified reports to that effect to the auditor of state. (Id., §§ 2405, 2406.)

**Transcripts as Evidence.** That the transcript of notes of any duly appointed court stenographer of any proceedings taken by such stenographer in any court of record in the state of Kansas which shall thereafter be transcribed by such stenographer, and thereafter verified by his affidavit as being a full and true transcript of the notes taken by him at any trial or other legal proceeding before such court of record, or certified by him to be a true copy of all the evidence of any witness or witnesses used and examined in any such legal proceedings before a court of record, may be introduced in evidence by any party desiring to use the same under like circumstances and with like effect as the deposition of such witness or witnesses (Id., § 2407.)

**Penalty for Making False Certificate.** If any court stenographer shall purposely and falsely certify to or shall falsely verify his notes, or omit from his notes any portion of the proceedings relating to the matter called for by the party desiring to use the same, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not more than five hun-

dred dollars, or imprisonment in the county jail for not more than six months, or by both such fine and imprisonment, in the discretion of the court. (Id., § 2408.)

#### WYANDOTTE COUNTY—29th Judicial District, and Court of Common Pleas of Wyandotte County.

Note: Official reporters are provided for these courts by Chapter 122, Laws of 1899, which act is similar to the general law above set out, except as to qualifications and compensation. Such reporters must be able, in an examination before the committee appointed for that purpose, to write at the rate of one hundred seventy-five words per minute for five consecutive minutes, and to correctly read and transcribe the same. As to compensation, such reporters are governed by the following act:

**Compensation.** The official reporters of the district court and court of common pleas in judicial districts consisting of one county and now having or hereafter acquiring 100,000 inhabitants shall each receive a salary of twelve hundred dollars per annum, payable from the state treasury in monthly installments at the close of each month; and in addition thereto shall receive not to exceed the sum of fifty dollars per month payable out of the county treasury of said county, as the salaries of county officers are paid; they shall also receive the sum of ten cents per folio of one hundred words for each and every transcript furnished, which shall be paid by the party ordering the same; provided, that for each transcript ordered and paid for by a party to a suit the receipt of such official reporter for the fees so paid may be filed with the clerk of the court and the amount thereof shall be taxed as a part of the costs in said cause and paid by the losing party. (Laws of 1911, Ch. 154, § 1.)

#### SHAWNEE AND SEDGWICK COUNTIES.

Note: The general act given above applies to these counties, except as below:

**Appointment—Compensation—Duties.** The judge of each division is authorized to appoint for his division, a stenographer in the manner now provided for district courts, who shall have the same qualifications as are now provided for by law, and shall receive a salary of \$1,200.00 per annum, payable monthly by the state, and \$600.00 per annum, payable monthly by the county, and such fees for making all transcripts as are now provided by law, and in addition to his duties as court stenographer, such stenographer shall also perform, without extra compensation, the duties of a docket clerk as hereinafter provided. (Laws of 1911, Ch. 151, § 8.)

**Duties—To Act as Docket Clerk.** In all counties having a district court of two divisions, as herein provided, the court stenographer for each division shall be appointed, by the judge of such division, the deputy clerk of the district court, who shall, under the direction of the clerk of the district court, perform the duties of the docket clerk of such division, and who shall take the oath and give such reasonable bond as may be required by the clerk of the district court (Id., § 9.)

#### APPEALS.

**Transcript of Notes of Evidence.** Either party to any case tried in a court of record having an official stenographer may direct such stenographer to transcribe and certify to the correctness of all of the stenographer's notes of the testimony and proceedings in the case, or any such part as

such party may designate, and such transcript shall be made, certified and filed with the clerk of such court on payment to such stenographer by the party ordering the same of the costs of such transcript, and such transcript shall thereupon become a part of the record in the cause, subject to amendment and correction by the trial court or judge. (Gen. Stats., 1909, § 6169.)

#### REFEREES.

**Court Stenographer May Be Required to Attend.** A trial before referees is conducted in the same manner as a trial by the court. He may require the court stenographer, when not otherwise engaged, to attend, take and transcribe the testimony in the case. (Id., § 5894.)

#### GRAND JURY.

**Appointment—Duties—Compensation.** Every duly impaneled grand jury may appoint a stenographer, who at the direction of said grand jury shall take in shorthand the evidence given before said grand jury and shall transcribe the same when so directed by the grand jury; said transcript together with the minutes of said meeting shall be given to the prosecuting attorney of the proper county. Such stenographer shall receive five dollars per diem for the time actually employed as full compensation for his services, to be paid by the county. (Laws 1915, c. 192.)

#### CITY COURTS.

**Shorthand Report.** Any party litigant in said court who may so desire, upon paying the expense thereof, may have the evidence in the case taken in shorthand. The stenographer taking the same shall be approved and sworn by the judge of said court, and when so approved and sworn a transcript of the evidence so taken by such stenographer shall be the official record of the evidence. (Laws 1915, c. 196, § 6.)

# KENTUCKY

## CIRCUIT COURTS.

Note: See as to Stenographer in courts of continuous session, Stats. 1915, 1019a.

**Appointment—Qualifications—Term—Removal.** The judges of the circuit court of each judicial district of this commonwealth, or the judge of any division of said court, may, in his discretion, appoint an official stenographic reporter for such court or division, and if said judicial district embraces more than one county, he may appoint an official stenographic reporter for each county or any counties in his district, who shall be skilled in the profession, and who shall hold office for a period of four years, or until his successor is appointed and qualified, unless sooner removed at the pleasure of the judge of said court or division, or for other cause shown as hereinafter provided. (Stats. 1915, § 4637; Act of July 13, 1893, as amended by act of Feb. 28, 1902.)

**Oath.** Said reporter, before entering upon the discharge of his duties, shall take an oath before the judge of the court or division for which said reporter is appointed to faithfully discharge the duties of such stenographic reporter. (Id., § 4638; Act of July 13, 1893.)

**Report of Civil Trial Made When Requested—Transcript—Carbon Copy.** Upon any trial or proceeding in any civil case in said court or division, if either party to the suit, or their attorney, shall request the services of said reporter, or if, in the opinion of the presiding judge, the testimony should be preserved, the presiding judge shall direct such reporter to make a full report of the testimony heard therein, whereupon it shall be the duty of the reporter to take full stenographic notes of such testimony, and upon the motion of either party to the suit or proceeding or their attorney, to cause a full and accurate transcript of the same to be made, which shall be filed among the papers to be used in making up the bill of exceptions to the court of appeals, and at the same time shall cause a full and accurate carbon copy of the transcript of testimony to be made, which copy shall be filed with the papers, and remain in the office of the clerk of the court as a public record. And for said carbon in civil and criminal cases, the reporter shall be allowed one-fifth the amount he is allowed for the original, to be paid for in the same manner as the original. (Id., § 4639; Act of July 13, 1893, as amended by act of Feb. 28, 1902.)

**Report of Criminal Trial Made When Requested—Transcript—Criminal Court in Jefferson County (Louisville).** Upon the trial of any criminal proceedings in said court, if the Commonwealth's attorney or the accused, through his attorney, shall request the services of said reporter, the presiding judge may, in his discretion, order a full report of the testimony and a transcript thereof, and a carbon copy of said transcript, which carbon copy shall remain in the office of the clerk of the court as a public record, whereupon it shall be the duty of said reporter to take full shorthand notes of such testimony and to make such transcript thereof as he may be directed to make by the judge of the court: Provided, however, that in counties having a population of one hundred and fifty thousand or more, the reporter of the criminal branch of the circuit court shall take the proceedings in shorthand in all cases tried or called for trial in said court, embracing preliminary motions, rulings of court, examination of jurors, testimony and arguments of counsel. Which transcript may be used in making up the bill of exceptions to the court of appeals. (Id., § 4640; Act of July 13, 1893, as amended by act of March, 1904, p. 308.)



**In Equity Cases—Transcript.** In any equity suit or proceeding pending in such court or division, where testimony is to be taken, if either of the parties to the suit or proceeding, or their attorney, shall suggest, the presiding judge may, in his discretion, direct such testimony to be taken by the reporter, in which case it shall be the duty of said reporter to take the testimony in shorthand, and to cause a full and accurate transcript of the same to be made, and filed among the papers of the case. (Id., § 4641; Act of July 13, 1893.)

**Compensation—Per Diem—Transcript Fees—Criminal Court Jefferson County (Louisville).** The fees of said reporters appointed under the provisions of this act, when serving in criminal cases in any of said courts, shall be fixed by the presiding judge thereof, not, however, to exceed five dollars per day for taking stenographic notes, and fifteen cents per one hundred words for the transcript thereof, which fees shall be paid upon the order of the presiding judge of said court, by the county in which said circuit court is situated, if the same is ordered by the court for the use of the Commonwealth's attorney. If the transcript of the notes of said reporter in any criminal case is ordered by the presiding judge upon the motion of the defendant, or his counsel, the defendant shall be required to pay for the same, if, in the opinion of the court, he is able to do so. If it shall appear that the defendant is not able to pay for such transcript, the court may direct the same to be paid for as heretofore provided, and the same may be recovered at any future time from the defendant: Provided, That the amount paid by the county in such cases shall not exceed twelve hundred dollars per annum: Provided, however, That in counties having a population of one hundred and fifty thousand or more, the reporter of the criminal branch of the circuit shall receive a salary to be fixed by the presiding judge of said branch of said court, not exceeding, however, the sum of twenty-five hundred dollars, per annum, and shall receive no other compensation from the county for such services: And Provided, Further, That no part of the fees or salary of said reporter shall be paid by the Commonwealth. The fees of said reporter, when serving in civil cases in any of said courts or divisions, shall be fixed by the presiding judge thereof, not, however, to exceed five dollars per day for taking stenographic reports and fifteen cents per hundred words for the transcript thereof, which shall be paid forthwith by the party or parties in whose behalf such reports or transcript is ordered, and shall be taxed as a part of the costs of the suit or proceeding: Provided, however, That said reporter shall not be required to file any of said transcripts without payment therefor by the party or parties in whose behalf the same is ordered: Provided, however, Further, That the presiding judge of said court or division may direct said reporter to file a transcript upon the motion of any party suing in forma pauperis. (Id., § 4642; Act of July 13, 1893, as amended by act of March, 1904, p. 308.)

**Transcript Used in Subsequent Trial if Witness Absent—Exception.** The testimony of any witness or witnesses taken by said reporter in any court or division as aforesaid shall constitute a part of the record of the case, and may, in the discretion of the presiding judge, be used in any subsequent trial of the same case between the same parties, where the testimony of such witness or witnesses cannot be procured, which fact must be made to appear satisfactorily to the court by the affidavit of the party desiring to use the same, or his attorney: Provided, That in criminal cases such testimony shall be so used only upon the consent of the defendant. (Id., § 4643; Act of July 13, 1893.)

**Transcript Used upon Appeal Without Being Copied.** Any of said transcripts of testimony made by such reporter, as aforesaid, when attested by the judge before whom the trial was had, may be taken, without being copied, to the court of appeals, to be used upon an appeal, and thereafter returned to the court in which it was made. (Id., § 4644; Act of July 13, 1893.)

**Removal—Penalty for Misconduct.** If said reporter shall prove to be incompetent, or shall fail to perform, in whole or in part, faithfully the duties, obligations and labors enjoined upon him in this act, he shall at once be removed by the judge of such court or division upon the application of any responsible person, showing good cause therefor by competent evidence; and if said reporter shall be guilty of any willful or corrupt misconduct or neglect in the discharge of any of the duties, obligations or labors required to be by him performed by any of the provisions of this act, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months. (Id., § 4645; Act of July 13, 1893.)

#### COURTS OF CONTINUOUS SESSION.

**Appointment—Term.** Each judge of a circuit court of continuous session in counties having a population of less than one hundred and fifty thousand, and which county constitutes a separate judicial district, may, in his discretion, appoint a stenographic reporter for such court, who shall hold office for a period of four years, or until his successor is appointed and qualified, unless such reporter is sooner removed by the judge of said court for neglect of duty, misbehavior in office or incompetency. (Stats. 1915, § 1019a1; Act of March 29, 1902.)

**Oath—Record of Appointment.** Said reporter, before entering upon the discharge of his duties, shall take an oath before the judge of said court to faithfully discharge the duties of his office. The appointment of said reporter, and the fact of his having qualified, shall be spread upon the order-book of the court for which he is appointed. (Id., § 1019a2.)

**Duties.** Said reporter shall attend all sessions of said court from day to day, unless he is excused from such attendance by an order of the court; and said reporter shall, under the control and direction of said court, take stenographic notes of oral evidence in criminal and penal prosecutions and ordinary actions tried in said court, and in any action, prosecution or proceeding in said court which the court may direct. (Id., § 1019a3.)

**Substitute.** In the absence of said reporter or when, for any reason, he does not or cannot act, the court may appoint another person to act as stenographic reporter, and the acts of the person so appointed shall have the same effect for every purpose as if done by the stenographic reporter. (Id., § 1019a4.)

**Transcripts on Order of Court.** Said reporter, when required by an order of the court, shall make a transcript of his notes taken in any action, prosecution or proceeding, and shall file said transcript in the clerk's office of the court for which said reporter has been appointed. (Id., § 1019a5.)

**Testimony of Absent Witnesses.** The testimony of any witness taken by said reporter may, in the discretion of the court in which it is taken, be used as evidence in any subsequent trial of the same issue between the same parties, where the testimony of such witness cannot be procured;

but the testimony so taken shall not be used in any criminal case except with the consent of the defendant. (Id., § 1019a6.)

**Compensation—Salary and Transcript Fees, How Paid.** Said reporter shall receive for his services in taking stenographic notes a salary of not more than one thousand dollars per annum, to be fixed by the fiscal court of the county in which the court appointing said reporter is held, and to be paid in monthly installments by said county. For making transcripts of evidence taken by him, said reporter shall receive twenty-five cents per page original copy and ten cents per page for each duplicate thereof, said pages to average not less than thirty lines of not less than eleven words each. In civil actions or proceedings the fees of making any transcript or duplicate shall be paid by the party upon whose motion such transcript or duplicate is made, such fees to be taxed as a part of the costs in the case. In criminal cases the fees for making transcripts and duplicates shall be paid by the county in which the court is held, whenever said transcript and duplicate are made upon the motion of the Commonwealth. If such transcript or duplicate is made upon motion of the defendant in a criminal case, such defendant shall pay the fees therefor, unless the court is satisfied that he is unable to do so, in which event such fee shall be paid by said county. (Id., § 1019a7.)

**Transcript Used on Appeal.** The transcript or duplicate made by the reporter and filed in the clerk's office, when certified by the court to be correct, may be used in the court of appeals as part of the record in the action or prosecution in which the notes from which it has been transcribed were made. (Id., § 1019a8.)

#### COUNTY JUDGE—Stenographer for. (Jefferson County.)

**Appointment—Term.** In all counties in this Commonwealth having a population of two hundred thousand or over, there is hereby created the office of Stenographer to the County Judge; said stenographer shall be appointed by the county judge for a term of four years, but may be removed at any time by said county judge. (Stats. 1915, § 1061a; Acts of 1914, Ch. 43, § 1.)

**Duties.** It shall be the duty of said stenographer to do stenographic work and typewriting for said county judge; and said stenographer shall perform such other duties as may be assigned to him by said county judge. (Id., § 2.)

**Power to Administer Oaths.** Said stenographer, by virtue of his office, shall have the same power of administering an oath as a Notary Public (Id., § 3.)

**Salary.** The salary of said stenographer shall be fixed by the county judge, not to exceed \$900 per annum, payable out of the county levy in equal monthly installments. (Id., § 4.)

#### GOVERNOR—Stenographer For.

**Appointment—Salary—Term.** The Governor of the Commonwealth of Kentucky is hereby empowered to employ a stenographer for his own use, at a salary not exceeding fifteen hundred dollars per annum, payable monthly in installments of one hundred and twenty-five dollars each out of the treasury of the state, upon the Auditor of Public Accounts. Said Stenographer shall be subject to removal at the pleasure of the Governor. (Stats. 1915, § 4645a.)

# LOUISIANA

## DISTRICT COURTS—EXCEPT THE PARISH OF ORLEANS.

**Appointment—Qualifications—Duties—Compensation.** The clerks of the various district courts of the state, the parish of Orleans excepted, are authorized to employ, with the approval of the district judge, a shorthand reporter, male or female, to report and transcribe the testimony taken in open court, or in chambers, in appealable civil cases before the district courts of the state. The district judge shall not disapprove such appointment except for incompetency, intemperance or bad moral character, and such cases shall be subject to judicial review. Such stenographers shall file with the clerk of the court within ten days from taking evidence, a transcript thereof. A charge of fifteen cents a folio shall be allowed to be taxed as costs. The clerks of the district courts shall be responsible on their official bond for all damages arising from negligence of such stenographers. If the clerks should refuse or neglect to employ a shorthand reporter, the judges of the district court may, in their discretion, appoint for their respective districts a shorthand reporter, who shall be sworn and take and transcribe the testimony in all appealable civil cases, and who shall give bond in favor of such judge in the sum of one thousand dollars to faithfully perform the duties of his office, which bond shall be approved by the district judge and recorded in the mortgage book of the parish or parishes for which such shorthand reporter is appointed, and the pay of such stenographer shall be the same as that of a stenographer appointed by the clerk. Such reporters shall be entitled to collect their charges in the same manner as is provided by law for the payment of costs. No stenographer shall, however, take testimony in any case unless some party to the suit requests him. (Rev. Laws, 1904, p. 936.)

**Transcripts—Three Carbons Without Extra Charge.** In all civil and criminal cases wherein a note of evidence is taken and same is appealable to the Supreme Court of the State of Louisiana, the stenographer shall, in transcribing his notes, make an original and three carbons, and shall deliver the original and three carbons into court or to the clerk of the court of the parish in which the case is being tried, including the Parish of Orleans, within ten days as now required by law, and the said carbons shall be furnished without extra charge. (Act No. 79 of the year 1912; Marr's Stats. 1915, § 6746.)

**Clerks' Transcripts in Triplicate.** The clerks of the district courts of the various parishes throughout the state, including the Parish of Orleans, without extra charge shall make all transcripts of appeal to the Supreme Court in triplicate; that where a note of evidence has been taken in the case, a copy of the note of evidence shall be embraced in each triplicate copy of the record, and the whole as thus made up shall be forwarded to the clerk of the Supreme Court of Louisiana, who shall file the triplicate copies and preserve the same for the use of the court. (Act No. 80 of the year 1912.)

Note: While Act No. 80, supra, became a law, the accompanying act providing that three or more judges of the Supreme Court might decide cases, and so certify, failed of passage.

**CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS.** (City of New Orleans.)

**Five Reporters—Compensation—Expenses.** There shall be five official shorthand reporters for the Civil District Court for the Parish of Orleans,

each of whom shall receive a salary of thirty-six hundred dollars a year, and each of whom shall upon his signed statement be reimbursed for the actual expenses incident to the transcription and delivery of the testimony taken under the provisions of this act, provided that in no event shall the said expense exceed one hundred dollars per month; and the salary of the said shorthand reporters, and the payment of the said expenses, as herein provided, shall be made from the judicial expense funds for the Parish of Orleans, provided that persons holding the office of school director may be appointed under this act. (Act No. 141 of the year 1914, § 1; promulgated July 17, 1914; Marr's Stats., 1915, § 6755.)

**Appointment—Oath.** Each of the said five shorthand reporters shall be appointed by the judge of the division of the Civil District Court wherein the said shorthand reporter shall serve, and each shall be sworn for the faithful performance of his duties. (Id., § 2; Id., § 6756.)

**Duties—Reporting Fee Paid by Litigants.** It shall be the duty of the shorthand reporters so appointed to report all testimony taken in open court, or in chambers, and in all such other proceedings or places as in the opinion of the court may be necessary. It shall be the duty of the said shorthand reporters, after taking the testimony down in shorthand, as hereinbefore provided, to deliver to the clerk of the court within fifteen days after the taking of the said testimony, a transcript of same, printed or typewritten in legible form, together with the number of copies as is now provided, or may hereafter be provided by law, and the said transcript and copies shall be properly numbered and docketed under the title of the cause in which the said testimony was taken. Provided further, that before the trial of each case the plaintiff and the defendant shall each pay to the clerk of the Civil District Court the sum of five dollars, which shall be the only cost charged to litigants for the use of said shorthand reporters, and which said amounts so collected by the said clerk shall be paid by him into the judicial expense fund. (Id., § 3; Id., § 6757.)

**Substitute Reporter.** The shorthand reporters so appointed shall have the right at any time to designate a competent person in his place and stead, such person to be satisfactory to the judge, to perform the duties therein required, such employment to be merely temporary and the said substitute to be paid for his said services by the official shorthand reporter, out of the compensation herein provided for; provided that, in the event of the illness and consequent inability of the official reporter to act, the judge shall designate a reporter *ad hoc*, whose employment shall be temporary, and who shall be paid out of the judicial fund such reasonable compensation for his services as may be fixed by the court. (Id., § 4; Id., § 6758.)

Note: See case of Rapiet v. Guedry at 3E of this Digest in re above act. No appointments have been made under the Act of 1914 and reporters are still working under the old law, as follows:

**Appointment—Qualifications—Oath—Bond—Duties—Compensation—Taxation of Fees.** The judge of each district court for the parish of Orleans, wherein civil actions are tried, shall appoint one competent shorthand reporter, capable of reporting at the rate of one hundred and fifty words a minute, who shall be sworn as an officer of the court, and shall file a bond in the sum of one thousand dollars, for the faithful performance of his duties, which bond shall be filed in the office of the secretary of state. The judge of any district court in the state outside of the parish of Orleans may, in his discretion, in any particular case appoint a shorthand reporter to take the

testimony in such cases upon application of all parties to the suit or their counsel. Such reporter shall report the testimony and proceedings and furnish and file in court within ten days of the taking of the same a transcript of the testimony. Such reporter shall be entitled to charge for each folio of transcript thirty-five cents, to be charged as costs, provided the employment of such stenographer be not obligatory when either party agrees to dispense therewith. Such reporter shall be entitled to collect his fees from the plaintiff in a suit on a sworn statement of the correctness of the charge, approved by the judge, to be taxed as part of the costs of the suit, and shall be payable in the same manner as other costs in the district courts of the state. (Rev. Laws 1904, page 946; Marr's Stats., 1915, §§ 6747, 6751.)

**Reporters by Contract—Oath.** When no one will accept the position of shorthand reporter in the civil district court for the parish of Orleans, the parties may procure by contract the services of a shorthand reporter, in which case the court shall swear him to faithfully perform his duties, but no party shall be compelled to have notes of evidence or testimony taken by a shorthand reporter. (Rev. Laws 1904, page 947; Marr's Stats., 1915, §§ 6752, 6753.)

#### CRIMINAL DISTRICT COURTS FOR THE PARISH OF ORLEANS.

**Appointment—Oath—Duties—Reporting Grand Jury.** There shall be two official stenographers at a salary of twenty-four hundred dollars a year each, for the Criminal District Court for the Parish of Orleans, one for each section of the court, to be appointed and sworn by each of the presiding judges respectively. It shall be their duty, under the direction of the clerk of the Criminal District Court, to prepare and make up the transcripts of all appeals taken from the judgments of the Criminal District Court for the Parish of Orleans, to report the proceedings in the trial of all capital cases and felonies where the punishment may be imprisonment at hard labor for a term exceeding five years, and in such other proceedings as in the opinion of the court may be important and necessary. They shall also be required by the court on the application of the prosecuting officer or foreman of the Grand Jury, to report the testimony in any particular case before the Grand Jury; his notes of said testimony and the copy thereof shall be filed with the secret archives of the court to be used in the interest of public justice, subject to its orders. (Act No. 64 of the year 1912, § 1; Marr's Stats., 1915, § 6759.)

#### PERSONS UNABLE TO PAY COSTS.

Certain persons are given the right to the use of the courts of Louisiana without the payment of costs, and without giving a bond for costs. This act extends to the services of official stenographers, provided that no officer shall be required to incur any cash outlay. The judges are directed to restrict the provisions of this act to such persons as are clearly entitled to it, and the fomentation of litigation by the indiscriminate resort to this act is to be avoided. Suits for divorce or separation from bed and board are especially excepted from the provisions of this act. In case a party availing himself of the privileges of this act recovers judgment against the opposite party, all such costs are made a lien on said judgment, and are first payable to the officers entitled thereto before any of said judgment is payable to the prevailing party. Defendants in criminal cases, after conviction, whose circumstances bring them within the provisions of this act, may avail themselves of it. (Act No. 156 of the year 1912.)

## CITY CRIMINAL COURTS OF THE CITY OF NEW ORLEANS.

**Appointment—Term—Oath—Compensation—Duties—Transcript as Evidence.** The judges of the first and second city criminal courts of the city of New Orleans shall appoint an official stenographer, removable at their pleasure, who shall be sworn to fulfill the duties of his office. He shall receive fifteen hundred dollars a year, payable in monthly installments by the city of New Orleans, and he shall also be a deputy clerk. He shall take verbatim notes of the testimony in cases heard before said court, but his notes need not be transcribed except in cases on appeal, or when the case is remanded or comes before the criminal district court, or when the court orders the transcription in the interest of justice. When transcribed it shall be certified to by the stenographer, and signed by the judge, and when so signed and certified may be used in any subsequent judicial proceeding in case of the death or absence of the witness from the state. (Rev. Laws 1904, page 956, § 2.)

# MAINE

## SUPREME JUDICIAL AND SUPERIOR COURTS.

**Appointment—Oath—Duties—Compensation.** Any justice of the Supreme Judicial Court and either justice of the Superior Courts, may appoint a stenographer to report the proceedings thereof, who shall be an officer of the court, and be sworn to a faithful discharge of his duty. He shall take full notes of all oral testimony, and other proceedings in the trial of causes, including the charge of the justice and all comments and rulings of said justice in the presence of the jury during the progress of the trial, as well as all statements and arguments of counsel addressed to the court, and furnish for the use of the court or any party interested, a fair, legible, longhand copy of so much of his notes as may be required. He shall also furnish a copy of so much of the evidence, and other proceedings, taken by him, as either party to the trial requests, on payment therefor by such party at the rate of ten cents for every hundred words. The stenographer appointed by the chief justice of the supreme judicial court shall also perform such other official and clerical services as may be required of him by the chief justice in term time or vacation. (Rev. 1903, Ch. 84, § 161.)

**Transcripts as Evidence.** Whenever it becomes necessary, in any court in the state, to prove the testimony of a witness at the trial of any former case in any court in the state, the certified copy of the notes of such testimony, taken by the stenographic reporter at the court where said witness testified, is evidence to prove the same. (Id., § 162.)

**Taxation of Fees.** Any amount legally chargeable by stenographic court reporters, for writing out their reports for use in law cases, and actually paid by either party, whose duty it is to furnish them, may be taxed in the bill of costs and allowed against the losing party, as is now allowed for copies, if furnished by the clerk. (Rev. 1903, Ch. 84, § 163.)

**Transcripts—Compensation for, Murder Cases.** Whenever any person is convicted of murder, a copy of the indictment, plea, evidence, and charge of the presiding justice, certified by the official stenographer, shall be filed with the clerk of the court where such trial is held. If such stenographer is paid an annual salary, the making and filing of said copy shall be without extra compensation, otherwise the expense thereof shall be paid by the county; but this section shall not apply to cases where a motion for a new trial is filed. (Id., Ch. 135, § 28.)

**Expenses.** Supreme judicial and superior court stenographers shall be reimbursed for their expenses only when in attendance at court away from home, such reimbursement to be made by the county in which the court is held, a detailed statement of such expenses, actually and reasonably incurred, to be approved by the justice presiding at such court. (Laws 1911, Ch. 126.)

**Salary—Supreme Judicial Court.** Stenographers appointed by the justices of the supreme judicial court shall receive \$1,500 each in full for all services formerly chargeable to the counties. (Rev. 1903, Ch. 116, § 1.)

**Salary—Superior Courts.** The salaries of stenographers of the superior courts, to be paid quarterly from the treasuries of their counties, are as follows: Cumberland, fifteen hundred dollars a year, in full for all services heretofore legally chargeable by him to the county. Kennebec, fifteen hundred dollars a year, in full for all services chargeable by him to the county. (Id. Ch. 116, § 8, as amended by Laws of 1913, Ch. 219 and Laws of 1915, Ch. 25.)



**Duties in Equity Cases.** At any hearing or trial in equity when oral testimony is presented, it shall be reduced to writing by the stenographer, certified by him and filed for use in case of appeal. (Id., Ch. 79, § 20.)

**Hearings in Vacation.** At any hearing in vacation of a cause in law or equity pending in the supreme judicial court, the presiding justice may, when necessary, appoint a stenographer other than his regularly appointed court stenographer to report the proceedings thereof, who shall receive for his services from the treasury of the county in which the cause is pending a sum not exceeding six dollars a day for attendance, in addition to actual traveling expenses; but when at such hearings the presiding justice employs his regularly appointed stenographer, such stenographer shall receive from said treasury only the amount of his actual expenses incurred in attending the same. (Laws 1907, Ch. 24; 1909, Ch. 10.)

**Certificate of Official Stenographer Sufficient Authentication.** In all cases coming before the law court from the supreme judicial or superior court, in which a copy of the evidence is required by statute, rule of court, or order of the presiding justice, a certificate signed by the official court stenographer, stating that the report furnished by him is a correct transcript of his stenographic notes of the testimony and the proceedings at the trial of the cause, shall be a sufficient authentication thereof without the signature of the presiding justice. (Laws 1913, Ch. 103, § 1.)

**In Case of Death or Disability of Stenographer.** When a verdict has been rendered or a decree made in any cause, in law or equity, in the supreme judicial or superior court, and a certified copy of the evidence taken by the official stenographer cannot be obtained by reason of the death or disability of such stenographer, the justice who presided at the trial of such cause may, if a motion for a new trial has been filed during the term at which the verdict was rendered, set aside such verdict and grant a new trial at any time within one year after it was returned, when in his opinion the evidence demands it; and exceptions allowed by such justice, when the evidence or any portion thereof is made a part of the exceptions, or an appeal taken from any decree in equity made by him, may be heard and determined by the law court either upon a statement of facts agreed upon by counsel and certified by such justice, or upon a report signed and certified by him as a true report of all the material facts in the case. (Laws 1913, Ch. 103, § 2.)

#### PROBATE AND INSOLVENCY COURTS.

**Appointment—Oath—Transcripts.** The judge of any court of probate or court of insolvency, may appoint a stenographer to report the proceedings at any hearing or examination in his court, whenever such judge deems it necessary or advisable. Such stenographer shall be sworn to a faithful discharge of his duty, and, under the direction of the judge, shall take full notes of all oral testimony at such hearing or examination, and also such other proceedings at such hearing or examination as the judge directs, and when required by the judge shall furnish for the files of the court a correct and legible longhand or typewritten transcript of his notes of the oral testimony of any person testifying at such hearing or submitting to such examination, and in making said transcript the stenographer shall transcribe his said notes in full by questions and answers. (Rev. 1903, Ch. 65, § 8.)

**Signing Transcripts, and Waiver Thereof.** When a transcript has been made as provided by the preceding section, it shall be read to the person whose testimony or examination it is, at a time and place to be appointed by

the judge, unless such person or his counsel, in writing, waives such reading, and if it is found to be correct, or if it contains errors or mistakes, and such errors or mistakes are either corrected or the proceedings had in relation to the same as hereinafter provided, such transcript shall be signed by the person whose testimony or examination it is, in all cases where the person testifying or submitting to examination is required by law to sign his testimony or examination. When the reading of a transcript is waived as provided by this section, such transcript shall be deemed correct. But any person whose testimony or examination has been so taken, may, with the consent of the judge, waive in writing, the signing of the transcript, and in such case the stenographer shall read his notes to such person before the hearing or examination is closed, and if they are found to be correct, or if alleged errors or mistakes are either corrected, or proceedings are had in relation to the same, in like manner as provided in section eleven with reference to transcripts, the transcript of such testimony or examination shall be deemed to be complete and correct without signing, and shall have the same effect as if signed. (Rev. 1903, Ch. 65, § 9.)

**Compensation.** Stenographers appointed by the court of probate or the court of insolvency shall be paid five dollars a day for their services in court or at an examination, and travel at the rate of twelve cents a mile from place of residence to the place of holding the court or examination, and ten cents for every hundred words transcribed and furnished for the files of the court, to be paid by the county in which the court or examination is held, after the stenographer's bill has been allowed by the judge of the court, in which the services were rendered. (Id., Ch. 65, § 41.)

**Transcripts to Any Person—Compensation For.** Such stenographers shall also furnish typewritten copies of their notes to any person calling for the same, upon the payment of ten cents for every hundred words of copy furnished. (Id., Ch. 65, § 42.)

#### TRANSCRIPTS AS EVIDENCE.

Whenever it is necessary in the courts of the state to prove the testimony taken, the certified copy of the transcript of such testimony is evidence to prove the same. (Id., Ch. 65, § 10.)

#### CORRECTION OF TRANSCRIPTS.

Manifest mistakes in the transcript may be corrected by the judge. A judge may assign a stenographer to attend an examination which is ordered to be held before some other person appointed by the judge, and such person shall then have the same power as the judge to correct the transcript of the stenographer. (Id., Ch. 65, §§ 11 and 12.)

#### CORONERS.

**Appointment—Compensation.** Coroners may employ a stenographer for the purpose of taking down the testimony of witnesses at the inquest. The stenographer shall receive six dollars a day, and ten cents a hundred words for transcript, and six cents a mile for actual travel. (Rev. 1903, Ch. 140, § 13.)

#### COMMISSIONERS TO TAKE DEPOSITIONS.

**Appointment.** The Governor may, with the advice and consent of the council, and upon the written recommendation of any judge of the supreme

judicial court, appoint competent stenographers of either sex as commissioners to take depositions in all cases, and disclosures of trustees, who shall hold office for four years. (Rev. 1903, Ch. 109, § 30.)

**Depositions, Taken Stenographically.** The deposition may be taken stenographically by the consent of the parties to the suit. (Rev. 1903, Ch. 109, § 31.)

**Compensation.** Such commissioners shall receive the same fees for travel, swearing witnesses, notifying parties and deponents, as are received by justices of the peace, and in addition thereto, twenty cents a page for their transcripts. (Rev. 1903, Ch. 109, § 32.)

## MARYLAND

There is no general law in the state providing for stenographers. There are, however, a number of acts applying to particular counties.

### CITY OF BALTIMORE.—Various Courts.

**Appointment—Salary.** The judges of the Supreme Bench of Baltimore City are authorized and directed to appoint from time to time as many court stenographers, not exceeding in number altogether the number of said judges, as shall in their discretion be required for the services of the several courts of Baltimore City, who shall be sworn officers of the court, and shall each be paid a salary of \$1,800 per annum, when such stenographers shall be required to attend the courts regularly, or ten dollars per diem for each day of actual employment, when he shall be appointed to attend only when his service shall be specially required by the judge; said salaries to be paid in like manner as the salaries of the other officers of the courts are now paid as prescribed in Section 372 of this subdivision. (Baltimore City Code, 1906, § 379.)

**Qualifications—Term—Duties.** Each of the stenographers so appointed shall be skilled in the practice of his art, and shall hold his position during the pleasure of the Supreme Bench. It shall be his duty, under the direction of the judge of the court to which he may be assigned for the time being, to take full stenographic notes of all oral testimony and judicial opinions orally delivered in every judicial proceeding; and it shall be his duty to furnish to any party to such proceeding, upon request, a typewritten copy of the notes of testimony and judicial opinions so taken by him, or of such part thereof as may be required, on payment by such party of the expenses of such copy, at such rates as shall be fixed by rule of court at the time. Whenever any judge shall be satisfied that a copy of all or any part of the stenographic notes of testimony or judicial opinions, taken during any judicial proceeding at which he presided, is necessary for the purpose of justice, he shall under such rules as shall be prescribed by the Supreme Bench, pass an order that the expense of making a copy of such part of said stenographic notes as he shall specify in said order shall be deemed a necessary disbursement of the proceeding, and allowed as such to the prevailing party, and it shall be so taxed in the bill of cost, but shall be paid in the first instance as shall be directed in said order. (Id., § 380.)

### CITY OF BALTIMORE.—Orphans' Court.

**Appointment—Qualifications—Term—Duties—Compensation.** The judges of the Orphans' Court of the City of Baltimore are authorized and directed to appoint a stenographer for that court, who shall be a sworn officer of the court, but shall be required to attend the sessions of such court only when specially summoned by the presiding judge thereof. The stenographer so appointed shall be skilled in the practice of his art, and shall hold his position so long as he efficiently discharges the duties of his office. In any proceeding in said court in which either party shall give notice that in the event of a decision of said court adverse to the claim of such party, an appeal will be taken to the Court of Appeals, the presiding judge of the court shall require the attendance of the stenographer, whose duty it shall be in such proceedings to take full stenographic notes of all oral proofs and judicial opinions orally delivered; and in case appeal shall be taken from the decision of the court such notes shall be transcribed, and after being signed

by the witnesses, deponents or affiants, shall become a portion of the record of the case, to be transmitted by the judges of the court to the Court of Appeals. By consent of the parties to the proceedings in which such proofs shall be taken, and of the judges of said court, the signing of such record of proof by the witness, deponent or affiant, may be waived; in which case such record, after being authenticated by the certificate of said stenographer, or of the presiding judge of the court, shall be deemed to be the record of any proofs or proceedings so taken. The stenographer shall receive as compensation for his services the sum of eight dollars for each day of actual attendance at the court, by direction of the presiding judge thereof, which sum the presiding judge shall cause to be paid equally by the respective parties to the proceeding in which the notes shall be taken, and shall enforce payment thereof; and if the notes so taken shall be transcribed, as hereinbefore provided, the expense of such transcriptions, at the rate of ten cents for each one hundred words so transcribed, shall be taxed in the bill of costs of the proceedings to the party appellant, and shall thereafter be awarded as costs by the Court of Appeals, in accordance with the provisions of the Code of Public General Laws. (Id., § 381.)

**Assistant Stenographer.** The stenographer in each of the courts hereinbefore named may appoint an assistant stenographer, who shall also be a sworn officer of the court, to assist him in the discharge of his duties; provided that no additional compensation shall be paid or expense incurred by reason of such appointment.

**Transcript Fees.** Court stenographers shall be paid at the following rates for copies of the notes of testimony and judicial opinions taken and furnished by them under the provisions of §§ 379, 380 of Art. 4 of the Code of Public Local Laws, to-wit: Ten cents per folio of one hundred words for each original typewritten copy, and three cents per folio for each additional or carbon copy; and, in cases where copies are ordered in writing to be furnished for use in court on the day succeeding that on which the notes are taken there shall be an additional charge of three cents per folio for the first copy. (Rules of Court, 1906, P. 6.)

Note: The practice is twenty-six cents per page of two hundred words, and six cents per page for carbon when not daily copy; and fifty cents per page for original, and ten cents per page for carbon, for afternoon take in daily copy.

**Testimony in Open Court in Equity Cases.** Testimony in open court in equity cases shall be taken by a stenographer, unless both parties, the court concurring, shall agree to dispense with such reporting. Provision shall be made by each party, satisfactory to the stenographer, for the payment for such reporting and the transcribing of the testimony on his side, including one copy for the court, the cost of taking and transcribing to be taxed as costs. All testimony taken under this rule shall be charged for at the same rate as the testimony taken in the law courts, and as prescribed in Rule 6 (supra), but where stenographers are engaged and not used, they shall be entitled to charge a per diem of \$10 for each day so engaged and not employed. (Id., P. 74.)

Note: Chief Judge Harlan, in 1903, when sitting in one of the Equity courts, ruled that a stenographer must be employed to report the testimony and that the notes must be written up in the case; that this must be done irrespective of any agreement of counsel to waive the same, and that if the defendant did not make provision for a stenographer the court would decide the case on the plaintiff's testimony.

**Plenary Proceedings.** If witnesses are to be examined, the services of a stenographer shall be required, unless a written agreement shall be filed

in the cause, submitting to the decision of the court, as provided by the law authorizing the appointment of such stenographer. (Rules of Orphans' Court, 1906, Par. 7.)

#### CITY OF BALTIMORE.—Grand Jury.

**Appointment—Compensation—Duties.** Upon the organization of each grand jury in the city of Baltimore, upon their request in writing, the judges then sitting in the criminal court of the city of Baltimore may appoint a clerk, who shall be a competent stenographer, at a compensation not to exceed \$1,500 a year, to be paid by the mayor and the city council of Baltimore, which clerk shall transcribe the testimony given before any grand jury in said city, and whenever required by the state's attorney, shall attend upon and take and transcribe the testimony given at coroner's inquests, all of which testimony shall be for the exclusive use and benefit of the grand jury and the state's attorney of said city, unless otherwise ordered by the court. In addition to the compensation aforesaid to be paid the said clerk by the mayor and city council of Baltimore, the said mayor and city council of Baltimore shall make compensation to said stenographer for all testimony taken and transcribed by him at any coroner's inquest or inquests, and when requested by the state's attorney for the use of his office, at a rate not exceeding fifteen cents per hundred words of such testimony. Such stenographer shall take an oath to keep secret the proceedings before the grand jury. It shall be lawful for him to attend the sessions of the grand jury, take in shorthand the testimony, and furnish a transcript thereof to the grand jury and the state's attorney, and he shall not permit any other person to read his notes or a copy thereof. The original minutes shall be kept in the custody of the state's attorney, and shall only be taken from that office for the use of the grand jury, unless an order of the court has been first obtained. A violation of such duty shall be deemed a misdemeanor, and punished by a fine not exceeding \$1,000, or imprisoned in jail not exceeding one year, or by both fine and imprisonment. (Laws of 1900, Chap. 164, as amended by Laws of 1908, Chap. 162.)

#### LOCAL LAWS.

Following is a synopsis of the local laws applying to the various circuits of the state outside of Baltimore:

Circuit	Salary	Transcript	Date of Act
First	\$1,000		1908, c. 437
Second	1,600*		1912, c. 43
Third			
Harford Co.	1,500	5 cents**	{ 1912, c. 129 1914, c. 368
Fourth	No provision		
Fifth			
Carroll Co.	Fixed by court	5 cents	{ 1908, c. 110 1914, c. 246
Anne Arundel Co.	{ \$500-1,200 1,200		1914, c. 77
Sixth			
Montgomery Co.	\$10 per day	5 cents	1910, c. 380
Frederick Co.	Fixed by court		P. L. 1888, V. 2, p. 1112
Seventh			
Charles Co.	\$12 per day	5 cents	{ 1910, c. 575 1912, c. 70

\*Also allowed \$300 per annum for expenses.

\*\*May charge 20 cents per folio for daily transcript.

## STATE INDUSTRIAL ACCIDENT COMMISSION.

**Appointment—Compensation—Expenses.** The Commission may employ stenographers and fix their compensation, subject to the written approval of the governor, and such stenographers shall be entitled to receive their actual necessary expenses while traveling on the business of the Commission. (Laws of 1914, Ch. 800, § 5.)

**Depositions.** In an investigation, the Commission may cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions taken in cases pending before the Circuit Courts of the counties or the Common Law courts of Baltimore City, as is now or hereafter may be provided by law. (Id., § 8.)

**Transcripts as Evidence—Compensation for.** A transcribed copy of the evidence and proceedings, or any specific part thereof, of any investigation taken by a stenographer appointed by the Commission being certified and sworn to by such stenographer to be a true and correct transcript of the testimony, or of a particular witness, or any specific part thereof, or to be a correct transcript of the proceedings had on such investigation so purporting to be taken and subscribed, may be received in evidence by the Commission with the same effect as if such stenographer were present and testified to the facts certified. A copy of such transcript shall be furnished on demand to any party in interest upon the payment of the fee therefor, as provided for transcripts in the Circuit Courts of the Counties or the Common Law Courts of Baltimore City. (Id., § 11.)

# MASSACHUSETTS

## SUPREME JUDICIAL COURT.

**Appointment.** At the trial of any issue of fact in the Supreme Judicial Court, the presiding judge may appoint a stenographer, who shall be sworn. (Rev. 1902, p. 1489, Ch. 165, § 83.)

### SUPERIOR COURTS.

**Appointment—Oath—Removal.** The justices of the superior court, or a majority of them, shall appoint a stenographer for each regular session of said court held for civil business, and for each of the two divisions of the session of said court held for criminal business within and for the county of Suffolk, and a stenographer for said court in all other counties. They may also, if the business of the court requires it, appoint an additional stenographer in any county except Suffolk, who shall serve when designated for duty. Each stenographer shall be an officer of the court and shall be sworn, and the same person may be appointed stenographer for more than one county. Such justices, or a majority of them, may remove said stenographers at any time, and may fill a vacancy which is caused by such removal or otherwise. (Id. p. 1489, Ch. 165, § 80, as amended by C. 295, Acts of 1915.)

**Assistants—Oath—Stenographers Pro Tem.** Each stenographer who is appointed for the county of Suffolk, under the provisions of the preceding section, may, with the approval of any justice of said court, appoint one or more assistants, who shall also be sworn; but no additional compensation shall be paid or expense incurred by reason of such appointment. The presiding justice of said court may, in case of the illness or temporary absence of the stenographer, appoint a competent person to act during such illness or absence. (Id. § 81, as amended by Ch. 145 of the laws of 1904.)

**For Special or Temporary Sessions, County of Suffolk.** The presiding judge of any special or temporary session of the superior court, for civil or criminal business, in the county of Suffolk, may, in his discretion, appoint one or more stenographers to attend therein, who shall be officers of the court and who shall be sworn. But it shall not be necessary to appoint a stenographer for any session for civil business, if the justices do not consider it of a permanent and continuous character. (Id. § 82, as amended by Ch. 145 of the laws of 1904.)

**Appointment in Criminal Cases.** At the trial of any criminal case in the superior court, except in the county of Suffolk, the presiding justice may, at the request of the district attorney or of the defendant, appoint a stenographer who shall be sworn; Provided, however, that such request is made at a reasonable time before the trial, so as to enable the court to secure the attendance of a stenographer. The presiding justice may in like manner appoint a stenographer in any case of his own motion. (Id., § 83, as amended by Acts of 1912, Ch. 289.)

**Duties—Transcripts—Compensation—Taxation of Fees.** Stenographers shall attend the sessions of the courts for which they are appointed, and those who are appointed for jury sessions of the superior court for civil business in the county of Suffolk shall, when directed by the justice presiding in such session, serve in any other of said sessions as the necessities of the service may require. Such stenographers, unless excused therefrom by the presiding justice, stenographers for criminal business in the county of Suffolk, upon request of the presiding justice, the district attorney or defendant, stenographers for civil business in counties except Suffolk, and stenog-



raphers appointed under the provisions of §§ 82 and 83, shall take stenographic notes of all the evidence given at each trial in their respective courts, and of the rulings and charge of the presiding justice, and, when requested by him, shall read from such notes in open court any portion of the testimony so taken, and, upon request, shall provide him with a transcript of such notes, fully written out, of such part of said testimony, rulings or charge as may be desired, and, upon request, shall within a reasonable time furnish to either party a like transcript, upon payment by the party requesting it of ten cents a hundred words for each copy so furnished. If the transcript is furnished at the request of the presiding justice, the stenographer shall be paid therefor at the same rate by the county, upon a voucher approved by the justice, and, in criminal cases in the county of Suffolk, such expense and the expense of transcripts furnished to the district attorney shall be taxed like other expenses. The stenographer appointed for the criminal session of the superior court for the county of Suffolk, when not employed in said court, shall perform such services as stenographer as may be required by the district attorney, and shall receive the same compensation for transcripts as is hereinbefore provided. (Id., § 85.)

**Duties—Suffolk County.** Each stenographer who is appointed for the sessions of the superior court for civil business without juries in the county of Suffolk shall attend therein when requested by the presiding justice and shall perform the duties required by the preceding section of stenographers in the jury sessions of said court, and shall render such other clerical assistance to the justices of said court as said justices may consider necessary. He shall receive for transcripts furnished to parties the compensation provided in the preceding section. (Id., § 86.)

**May Interchange.** Official stenographers of the superior court in the same or different counties may, with the consent of said court, interchange services or perform the duties of each other. (Id., § 87.)

**Compensation.** Stenographers who are appointed for the sessions of the superior court for civil business with juries in the county of Suffolk, and the stenographers appointed for the session of said court for criminal business in said county, shall each receive an annual salary of twenty-five hundred dollars, which shall be paid by the county; stenographers appointed for the sessions of said court without juries shall each receive such salary as the justice of said court shall establish, not exceeding twenty-five hundred dollars, which shall be paid by the county. The stenographers appointed for the superior court for other counties which contain a population of more than two hundred thousand shall each receive such salary as the justices of said court shall establish, not exceeding twenty-five hundred dollars a year. (Id., § 88, as amended by C. 295, Acts of 1915.)

**Same.** The compensation of all of the stenographers of the superior court who are not on salary shall be twelve dollars for each day of actual and necessary attendance at court, to be paid by the county in which the service is rendered, upon the certificate of such attendance by the justice under whose direction the service is performed. In case the service is rendered in any court outside of the county in which the stenographer resides or has his usual place of business, the justice may, in his discretion, allow in addition to such compensation a reasonable sum for travel and board. (Ch. 759, Acts of 1914.)

**Note:** By Acts of 1913, the official court stenographer for the county of Norfolk shall be paid by the county such annual salary, not exceeding \$2,000, as the justices of the superior court shall establish.

**Transcripts as Evidence.** Transcripts from stenographic notes duly taken in the superior court under the authority of law, when verified by the certificate of the official stenographer or assistant taking them, shall be admissible as evidence of testimony given whenever proof of such testimony is otherwise competent. (Rev. 1902, p. 1584, Ch. 175, § 68.)

**Stenographers Alone to Take Notes.** During the trial of a case in which an official stenographer takes stenographic notes of the evidence, no other person shall interrupt the examination of witnesses for the purpose of taking notes of their testimony. (Id., p. 1563, Ch. 173, § 83.)

#### POLICE, DISTRICT AND MUNICIPAL COURTS.

**Appointment.** A police, district or municipal court or trial justice when sitting in an inquest into an election case, may employ a stenographer to report the proceedings in writing. (Id., p. 179, Ch. 11, § 310.)

#### GRAND JURIES.

**Appointment—Oath—Duties.** A justice of the superior court may, upon the request of the district attorney, appoint a stenographer, who shall be sworn and who shall take stenographic notes of such testimony given before the grand jury as he may direct, and shall provide him with a transcript fully written out of such part of said notes as he may require. The provisions of this section shall not authorize the taking of any statement or testimony of a grand juror. (Id., p. 1489, Ch. 165, § 84.)

#### INQUESTS.

**Verbatim Report Of—Payment For.** If the magistrate has reason to believe that an inquest to be held by him relates to the death by accident of a passenger or employe upon a railroad, or of a traveler upon a public or private way at a railroad crossing, or to a death by accident connected with the operation of a street railway, he shall cause a verbatim report of the evidence to be made and sworn to by the person making it, and the report and the bill for services, after examination and approval in writing by such magistrate, shall be forwarded forthwith, to the Public Service Commission. Such bill when approved by said board shall be forwarded to the auditor of accounts and be paid by the Commonwealth, assessed on the several corporations owning or operating the railroad or street railway on which the accident occurred. (Id., Ch. 24, § 14.)

#### LEGISLATIVE COMMITTEES.

**Filing Stenographic Reports Of.** Stenographic reports of committee hearings shall, at the end of the session at which the hearings were authorized, be deposited in the State Library, but such reports of hearings held during recess shall be so deposited before the next General Court convenes. (Id., p. 63, Ch. 3, § 18.)

# MICHIGAN

## CIRCUIT COURTS.

**Appointment—Term—Oath—Duties.** Stenographers shall be appointed for the circuit courts by the Governor upon the recommendation of the judge or judges of each respective circuit, and shall be deemed officers of the court. Such stenographers shall hold office during the pleasure of the Governor, provided the court shall have the power to suspend for incompetency or misconduct, and if the suspension be not rescinded within thirty days after the order of suspension, the office shall be deemed vacant. Before entering upon the duties of his office, each stenographer shall take and subscribe the constitutional oath of office to be administered by the presiding judge of the circuit, which oath of office shall be filed in the office of the secretary of state. No person shall be appointed stenographer for more than one circuit, unless he shall personally perform the duties of stenographer in each of the circuits for which he is appointed. (Comp. Laws 1897, §§ 364 and 365.)

**Vacancies, How Filled—Pro Tem.** In case of a vacancy in the office of the stenographer from death, resignation, suspension or inability to serve from any cause of a permanent nature, the governor shall appoint a successor to the office upon receiving notice from the presiding judge of such vacancy and the cause thereof. Such appointment to be made upon the recommendation of the judge or judges of such circuit. But in case of the temporary absence of the stenographer, he, said stenographer, shall appoint some competent person, approved by the judge, to act as stenographer pro tempore, who shall be paid by the stenographer in whose place he acts. (Id., § 366.)

**Assistants—Oath.** Every stenographer may, subject to the approval of the circuit judge, appoint one or more assistants, who shall take and file the oath of office as prescribed in section three, and shall have the power to act in the place of said stenographer, and whose compensation shall be paid by the stenographer. The stenographer or the circuit judge shall have the power to revoke such appointment at any time. (Id., §§ 367 and 295.)

**Additional Stenographers—Temporary Assistants.** In any circuit in this state, the governor shall from time to time appoint, on the recommendation of the judge or judges thereof, as many additional stenographers as there are additional judges in said circuit, which stenographers shall qualify in like manner, hold office for the same term, and perform like duties as other stenographers. Whenever the judge of any circuit court of this state shall deem it necessary for the dispatch of business of said court, he may authorize the stenographer thereof, to employ one or more temporary assistants, who shall receive compensation to be paid by the county, the judge of said court certifying as to the reasonableness thereof. (Id., § 368.)

**Duties.** It shall be the duty of each circuit court stenographer to attend upon the court at each term, under the direction of the judge thereof, and take full stenographic notes of the testimony, and charge to the jury in the trial of each issue of fact before the court or jury. (Id., § 369.)

**Preservation of Notes.** The stenographer or assistant stenographer, who shall take the notes on the trial or hearing in any case shall prefix to

his notes of the testimony of each witness, the full name of each witness, and the date the testimony was taken down, and, at the conclusion of the trial of said cause, he shall securely attach together all of his notes taken in said cause, and properly entitle them upon the outside, and safely keep the same in his office. In the event of his death or resignation, or removal from office or from this state, the stenographer's notes in each case shall be transferred to the county clerk of the county where the case was tried, who shall receive and safely keep the same, subject to the direction of the circuit court for the county; Provided, that said notes shall be a part of the record in said cause, and shall be subject to inspection as records in said cause. (Id., § 370.)

**Duty to Furnish Transcripts.** It shall also be the duty of each stenographer to furnish without delay, in legible English, copies of the notes taken by him or any part thereof, to any party who may request the same, for which he shall be entitled to demand and receive per folio the compensation hereinafter prescribed. (Id., § 371.)

**Duty to File Transcripts.** In case the circuit judge shall order the same, it shall be the duty of the stenographer to make and file in the clerk's office a copy of his notes in any civil case, or any part thereof, without expense to either party, which copy shall be deemed a part of the records in the case. (Id., § 372.)

**Transcripts at Expense of County.** In any criminal case, the court may, on request of the prosecuting attorney, or of counsel for the defense, order the stenographer to make, and the stenographer shall thereupon make and file in the clerk's office, to become a part of the official record in the case, a transcript of the notes taken in the case, or any part thereof, to be paid for by the county at the rate hereinafter prescribed. (Id., § 373.)

**Compensation.** The stenographer of each circuit shall receive as compensation for his services, such salary as is hereinafter specified, payable in monthly installments out of the treasury or treasuries of the county or counties composing the circuit of which he is the stenographer, upon the order of the clerk of the court, or board of county auditors, who are hereby authorized and required to draw such orders, and the county treasurer to pay the same upon presentation. (Id., § 374.)

**How Paid.** In every circuit court composed of more than one county, unless some other method of appointment is prescribed, in this act, to make up the salary of the stenographer, each board of supervisors in the circuit shall appropriate annually such proportion of the amount of the salary as shall be assigned to it, by the circuit judge, in proportion to the number of suits at law and in chancery, entered and commenced in the circuit courts for such counties respectively during the preceding year. And it shall be the duty of the circuit judge of each circuit composed of more than one county, on the first day of January of each year, or as soon thereafter as may be, to apportion the amount of such salary to be paid by each county in his circuit, on the basis aforesaid, and to notify the clerk of each county in the circuit of the proportion to be paid by such county. In case there is but one county in a circuit the salary of the stenographer shall be paid out of the treasury of such county in the manner above provided. (Id., § 375.)

**Amount of Compensation.** The compensation of stenographers in the various circuits has been fixed in the following amounts per year, such amounts being authorized by the Acts referred to below:

Circuit	Yearly Compensation	Comp. Laws	Acts of
1	\$1,400		1907, Act No. 218
2	2,000		1909, " " 5
3	2,500		1909, " " 17
4	1,800		1897, Sec. 379
5	2,000	" "	1897, " " 380
6	2,500		1913, Act No. 269
7	2,000		1911, " " 27
8	2,000		1909, " " 21
9	2,500		1913, " " 117
10	2,000		1913, " " 116
11	2,500	" "	1897, Sec. 386
12	3,000		1913, Act No. 289
13	1,800	" "	1897, Sec. 388
14	*1,500 and \$10 per diem	" "	1897, " " 389
15	1,800		1909, Act No. 22
16	1,500		1909, " " 64
17	2,000	" "	1897, Sec. 392
18	2,000		1911, Act No. 5
19	2,400		1915, " " 279
20	1,500		1901, " " 3
21	1,500		1899, " " 112
22	1,800		1905, " " 205
23	1,500		1905, " " 206
24	2,000		1909, " " 42
25	3,000		1905, " " 179
26	1,500	" "	1897, Sec. 401
27	10 per diem		1905, Act No. 190
28	2,000		1913, " " 322
29	1,600	" "	1897, Sec. 404
30	2,000		1907, Act No. 23
31	2,000		1907, " " 56
32	2,400		1913, " " 141
33	1,700		1907, " " 270
34	1,800		1909, " " 316
35	1,500		1907, " " 243
36	2,000		1913, " " 119
37	1,500		1907, " " 159
38	1,000		1903, " " 22
39	1,800		1913, " " 272
40	1,200		1915, " " 279

\*Circuit No. 14 is composed of two counties, one of which pays a salary of \$1,500 per annum, and the other pays \$10 per diem when the stenographer is in attendance.

**Transcript Fees—Taxation Of.** The circuit court stenographers shall be entitled to demand and receive per folio for transcripts ordered by either party to a cause, the sum of eight cents per folio, unless a lower rate be agreed upon. For transcripts ordered by the circuit judge as provided in this act, stenographers shall be entitled to receive from the county the compensation hereinbefore specified. In case the transcript is desired for the purpose of moving for a new trial, preparing a bill of exceptions, or removing the cause to the supreme court, the amount of stenographers' fees paid therefor shall be recovered as a part of the taxable costs by the prevailing party in such motion, or in the supreme court. (Comp. Laws, 1897, § 411.)

**Offices Furnished in Certain Counties.** In the counties of Wayne and Kent, the county auditors shall provide a suitable office for the use of said stenographers contiguous to the office of the clerk of said county. (Id., § 412.)

**Fee Taxed for Stenographic Report.** In each and every issue of fact tried, and contested before the court or jury in which the stenographer shall be employed, there shall be taxed three dollars, the sum to be paid by the plaintiff in the suit before the taking of testimony is commenced,

into the hands of the clerk of the court, and by him into the county treasury, to apply to the credit of the general expense fund, and if the plaintiff shall prevail in the suit, the amount so paid by him shall be taxed in his costs as proper disbursements. (Id., § 413.)

**Judge Need Not Write Charge When Stenographer is Present.** When a stenographer is present in court, the judge need not reduce his charge to writing. (Id., § 414.)

#### OFFICE OF PROSECUTING ATTORNEY. (Wayne County.)

**Appointment—Salary.** In each county in the state of Michigan having a population of over three hundred and fifty thousand inhabitants, the prosecuting attorney of such county is hereby authorized and empowered to appoint eight assistant prosecuting attorneys, etc. \* \* \* one chief clerk, one stenographer, one assistant stenographer and one investigating officer. The salary of the stenographer shall not be less than eighteen hundred dollars per annum, and of the assistant stenographer not less than fifteen hundred dollars per annum. (Act No. 101, P. A. of 1913.)

#### RECORDER'S COURT OF THE CITY OF DETROIT.

**Appointment—Duties—Transcripts—Compensation—Substitute.** There shall be two stenographers of the recorder's court of who shall be appointed by the recorder, and the persons so appointed shall be deemed officers of the court, and it shall be the duty of each to attend at each session thereof, and to take full stenographic testimony and of the charge of the court in all cases unless otherwise ordered by the judges thereof. And in pursuance of such order, they shall make without compensation, and file their notes, which shall be filed by the clerk and preserved in the files in the cause, subject to the inspection and use of the court. They shall each receive an annual salary not exceeding one thousand dollars, and not less than twelve hundred dollars, to be paid out of the county treasury. Said stenographers shall be entitled to the same fees for making and filing transcripts of testimony and charge of the court in any case, as shall be paid to the stenographers of the circuit court of Wayne county. (Comp. Laws, 1897, § 615.)

In case of the sickness or temporary absence of the recorder may appoint some competent person to act in his stead, and so acting, shall be paid out of the county treasury such sum as the court shall allow. (Id., § 616.)

#### SUPERIOR COURT OF GRAND RAPIDS

**Appointment—Oath—Term—Suspension—Removal.** The superior court of Grand Rapids shall be appointed by the governor, on the recommendation of the judge of said court. The person so appointed shall take and subscribe to the official oath prescribed by the court, and the oath shall be administered by the presiding judge. If the person so appointed shall be an officer of the court, and shall hold the position during the term of the governor: Provided, that the court shall have the power to remove him for incompetency or misconduct, and in such case shall thereafter cease to hold the office of stenographer of the court his suspension be rescinded. (Id., § 640.)

**Stenographer Pro Tem—Assistants.** In case of the death, removal or suspension of the stenographer, the governor shall appoint a successor to the office, but in case of sickness or temporary absence of the stenographer and his deputy, the judge may appoint some competent person to act in his absence. Said stenographer shall have the power to appoint one or more assistants subject to the approval of the court, whose duty shall be subject to and whose compensation shall be paid by the stenographer; Provided, the stenographer may revoke said appointment at any time. (Id., § 641.)

**Duties—Compensation.** It shall be the duty of said stenographer to attend upon the court, during the term thereof, and to take full stenographic notes of all testimony given, and proceedings had upon the trial of each issue of fact before the court or jury. Said stenographer shall receive a salary of two thousand dollars per annum, to be paid in monthly installments, from the general fund, in the same manner as other demands against the city. (Id., § 642.)

**Stenographer's Tax Fee.** Each and every issue of fact at law, or in chancery, tried before the court or jury, shall be taxed three dollars, to be paid by the plaintiff at the commencement of the trial into the hands of the clerk, and by him paid into the city treasury as other fees mentioned in this act. (Id., § 643.)

**Duty to Make Transcripts.** It shall be the duty of the stenographer upon the order of the court, to write out in legible English, a full copy of the notes taken by him on the trial of any cause, without fee or charge, and file the same with the clerk of said court, for the use of the court and the parties to said cause, and such copy shall be made and filed within such time as the court shall order. (Id., § 644.)

**Compensation for Transcripts.** It shall be the duty of said stenographer to furnish without delay, copies of the notes taken by him, written out in legible English, to any party who may request the same; and he shall be entitled to demand and receive therefor not to exceed six cents for each folio of one hundred words for the first copy and two cents per folio for each additional copy. (Id., § 645.)

#### PROBATE COURT OF WAYNE COUNTY.

**Appointment—Term—Removal—Duties—Compensation—Oath.** The judge of probate of the county of Wayne may appoint a stenographer for the probate court of said county, who shall be deemed an officer of the court, and shall hold his office during the term of the judge appointing him, unless sooner removed by said judge. He shall attend each session of the court, and when directed by the judge shall take stenographic notes of the testimony and proceedings, and perform such other services in connection with the business of the probate court as the judge shall require. He shall receive a salary of not to exceed \$2,000 to be fixed by the board of auditors of said county, which shall be paid by the treasurer of said county. In case either party desires a transcript he shall furnish such transcript and shall receive six cents a folio. He shall take an oath before entering upon his duties. (Laws 1903, page 121.)

#### POLICE COURT OF THE CITY OF DETROIT.

**Appointment—Compensation—Duties.** The presiding judge of the police court of the city of Detroit shall appoint a stenographer for said court, whose salary shall be fixed by the County Auditors. The stenographer

is required to write up all preliminary examinations in cases that are bound over to the recorder's court. (Laws 1885, page 215.)

Note: The auditors have fixed the salary at \$2,000 per annum. No transcript fee is allowed, but three cents a folio may be charged as compensation for typewriting.

#### PRELIMINARY HEARINGS.

**Stenographer Appointed—Compensation—Prima Facie Evidence.** Witnesses may be compelled to appear before such magistrate by subpoenas issued by him, etc., \* \* \*

*Provided*, That at any such examination it shall be lawful for such magistrate to appoint some suitable stenographer, at the request of the prosecuting attorney of said county, with the consent of the respondent or his attorney, to act as official stenographer pro tem. for the court of such magistrate, to take down in shorthand the testimony of any such examination, and any stenographer so appointed shall take the constitutional oath, as such official stenographer, and shall be entitled to the following fees: Six dollars for each day, and three dollars for each half day, while so employed in taking down such testimony, and ten cents per folio for typewriting such testimony so taken in shorthand, the same to be allowed and paid out of the treasury of the county in which such testimony is taken. *Provided*, further, That it shall not be necessary for a witness whose testimony is taken in shorthand by such stenographer, to sign such testimony, but any witness or witness shall have the right to have such testimony read over to them. Such testimony, after being typewritten, shall be received in any circuit court for the county in which such testimony is taken, and the signature of such witness or witnesses for the same purpose shall have the same effect as the testimony of witnesses as hereinabove provided. Testimony so taken shall be considered prima facie evidence in any case in which the testimony of such witness or witnesses at such examination is taken. (Laws 1885, No. 160.)

#### PROBATE COURTS.

**Appointment—Salary.** The Board of Supervisors may authorize the appointment by the probate judge, or by the clerk of the probate court, of stenographers of said probate court; such stenographer's salary as shall be fixed by the board of supervisors. (Laws 1885, c. 3, § 15.)



## MINNESOTA

DISTRICT COURTS—Except Hennepin, Ramsey, St. Louis, Cook and Lake Counties, and the 15th District.

**Appointment—To Act as Secretary—Term—Bond.** Each judge, by duplicate orders filed with the clerk and county auditor of the several counties of his district, may appoint a competent stenographer as reporter of the court, to hold office during his pleasure, and to act as his secretary in all matters pertaining to his official duties. Such reporter shall give bond to the state in the sum of two thousand dollars, to be approved by the judge appointing him, conditioned for the faithful and impartial discharge of all his duties, which bond, with his oath of office, shall be filed with the clerk in the county in which the judge resides. (Gen. Stats., 1913, § 240; Rev. Laws 1905, § 115.)

**Duties.** Such reporter shall make a complete stenographic record of all testimony given and all proceedings had before the judge upon the trial of issues of fact, with or without a jury, or before any referee appointed by such judge. In so doing, he shall take down all questions in the exact language thereof, and all answers thereto precisely as given by the witness or by the sworn interpreter. He shall also record, verbatim, all objections made, and the grounds thereof as stated by counsel, all rulings thereon, all exceptions taken, all motions, orders, and admissions made, and the charge to the jury. When directed so to do by the judge, he shall make a like record of any other matter or proceeding, and shall read to such judge or referee any record made by him, or transcribe the same, without charge, for any purpose in furtherance of justice. (Id., § 241; Id., § 116.)

**Notes Filed—When to Make Transcript.** As soon as the trial is ended, the reporter shall file his stenographic record thereof with the clerk, or elsewhere if the judge shall so direct, and upon request of any person interested, and payment or tender of his fees therefor, he shall furnish a transcript of such record in the words and figures represented by the characters used in making the same, and for that purpose he may take and retain such record so long as may be necessary, when it shall be returned to the files. (Id., § 242; Id., § 117.)

**To Act When Another Judge Presides.** Unless otherwise directed by the judge appointing him, the reporter shall serve as such in all matters heard by another judge when acting in place of the former, and shall perform in relation to such matters all the duties required of him by law. (Id., § 243; Id., § 118.)

**Compensation—Salary.** The judges, by an order filed with the county auditors annually on or before the first Monday in May, 1909, and on or before the first Monday in January, annually thereafter, shall apportion the salaries of the reporters in their respective districts among the several counties. Such salary shall be fixed by such order at not exceeding two thousand dollars per year, and each county shall be required by such order to pay a specified amount thereof in monthly installments, which amount shall be such proportion of the whole salary as the number of days' work actually done by a reporter in the trial of cases in said county during the preceding year bears to the whole number so performed in the district. Such stenographic reporters shall have and maintain their residences in their respective judicial districts. But if any reporter be appointed in two or more districts he may reside in any of the same. (Id., § 244; R. L., § 119, amended 1909, c. 168, § 1.)

Note: See also 1909, c. 285, and 1913, c. 343, amending G. S. 1894, § 4890 (1874, c. 88, § 4). 1874, c. 88 was not among the session laws of that year repealed by R. L., § 5527 (9437).

**Transcript Fees.** In addition to such salary, the reporter may charge for a transcript of his record, ordered by any person other than the judge, eight cents per folio thereof, and two cents per folio for each manifold or other copy thereof when so ordered that it can be made with such transcript. (Id., § 245; Id., § 120.)

**Readjustment of Salaries on Change of District.** Whenever a new judicial district is created, or the boundary lines of a judicial district are changed, the judge or judges of such district or districts shall, within thirty days after the establishing of such new district or the changing of such boundary lines, file an order readjusting the salaries of court reporters and the proportions to be paid by the several counties, with the several county auditors in each district, to conform to such changes, and the filing of such order shall vacate and set aside any and all orders then on file with such auditors. (Id., § 246; 1907, c. 242, § 1.)

**Existing Laws Not Affected.** Nothing in this chapter shall be construed as repealing or modifying existing laws relating to the office of court reporter in any judicial district which contains a city of the first class. (Id., § 247; Id., § 121.)

Note: "A city of the first class" means a city having 1 inhabitants.

#### DISTRICT COURT—St. Louis, Cook and Lake

**Appointment—Duties.** Each of the judges of the district courts of common pleas in this state, is hereby authorized to employ and appoint a shorthand writer, to make in a true record or report of the proceedings and evidence trial of issues of fact in the several courts held in his district required by the court, or either of the parties to any such trial, to scribe such record or report into words which shall be in the characters used by him in reporting such proceeding and the same shall occur; provided, however, that no such appointment in any county containing less than five thousand inhabitants whose board of county commissioners shall not first authorize the same: Provided, Further, That the provisions of this act shall not apply to the county of Ramsey, or be construed as repealing the law in force thereto. (Gen. Stats., 1894, § 4887.)

**Oath—Duties—Filing Notes—Removal.** Before such reporter takes upon the performance of his duties, he shall take and swear that he will to the best of his knowledge and ability, file in true writing, a true, full and accurate record of all the proceedings and evidence given upon the trials of issues of fact in the district courts required so to do by the judge of said court, and that he will file with the clerk of the court a true and full transcript of each case, into the words represented by the shorthand notes which he shall use in his shorthand writing. Such oath shall be filed in the office of the clerk of the district court in one of the judicial districts for which he is appointed. In reporting or recording the testimony of witnesses, sworn and examined upon the trial of issues of fact, he shall record or report the questions put to the witnesses, and the answers given by the witnesses, in the words used by the questioner. He shall not be required to report or record the arguments of counsel.

shall record all objections and the grounds thereof, as stated by counsel, and also the decisions or rulings of the court thereon, and exceptions taken by counsel to such decisions or rulings; and shall immediately upon the completion of any trial, file his report in such shorthand writing, in the office of the clerk of the court where such trial was had, which report shall remain on file for the use of the parties interested; and in the performance of his duties, he shall be subject to the orders and directions of the court; and the judge may at any time discharge such reporter, and employ and appoint another. (Gen. Stats., 1894, § 4888.)

**Transcripts as Bills of Exceptions.** When a record or report of a trial shall have been so made, transcribed and filed, and approved by the judges before whom such trial was had, it shall have such force and effect as a record of the court, and as a case, or bill of exceptions, as the court may, by general rule or order, prescribe. (Gen. Stats., 1894, § 4889.)

**Compensation.** The amount or rate of compensation to be paid to such shorthand reporter shall be fixed by the judge who appointed him; and each county shall pay the compensation for his services during the time he shall be employed in the cases tried therein. The judge shall certify the time during which he shall be employed at any term in the county, and the amount to which he is entitled therefor. Upon the presentation of such certificate of the judge to the county auditor of the county he shall draw his order, in favor of such reporter, upon the county treasurer, for the amount so certified; but such compensation shall not exceed ten dollars per day while employed in court, and fifteen cents per folio of one hundred words for the transcript; And Provided, Further, That when such reporter shall be required by either of the parties to an action to transcribe his record into longhand writing, the fees for such transcription as above provided for shall be paid by the party requiring the same. And Provided, Further, That in any county having or which may hereafter have a population of not less than seventy-five thousand nor more than two hundred thousand, and having a city of the first class, such shorthand reporter shall receive as compensation from such county the sum of three thousand dollars per annum, payable in equal monthly installments, at the same time and in the same manner as the salaries of other county officials of such county are paid, and his actual expenses when attending court at a place other than the county seat, to be paid upon presentation of the voucher of the reporter therefor, duly approved by the judge of such court. (Gen. Laws, 1913, Ch. 343, § 1.)

#### DISTRICT COURT—Hennepin County.

**Appointment—Qualifications—Term—Salary.** Each judge in any judicial district in this state which comprises, or which may hereafter comprise, a single county of three hundred thousand inhabitants or over, may appoint a phonographic reporter, who shall be well skilled in his profession and competent to discharge the duties required, and who shall be a sworn officer of said court, and shall hold his office during the pleasure of said judge so appointing him. The salary of said reporter shall be three thousand dollars per annum, payable in monthly installments by the county treasurer of the county comprised in such judicial district, from any fund in his hands not otherwise appropriated. (Laws 1915, Ch. 175.)

**Duties—Transcript Fees.** It shall be the duty of said phonographic reporters and each thereof, to take or cause to be taken, full phonographic

notes of all trials and proceedings in said court before the judge so appointing him, whenever so directed; and each of said reporters shall act in the capacity of a private secretary to the judge so appointing him, whenever so directed by said judge, in taking notes of any findings, decisions or orders of said judge, so given or rendered in open court or dictated at chambers to said reporter, and each of said reporters shall, when requested by said judge so appointing him, without charge therefor, transcribe said notes, or any part thereof, for the use of said judge, or for such other purpose in furtherance of justice as said judge may order; and each of said reporters shall furnish a freehand or typewritten copy of said notes, or any part thereof, at the request of any party to an action in said court, for which copy he shall be entitled to charge at the rate of ten cents per folio, or for every hundred words so written out; and whenever such transcript has been filed as provided by the rules of the court, the amount paid by any party for such copy to be used upon a motion for a new trial or appeal may be taxed and allowed as other disbursements are taxed and allowed in an action. (Id., § 249; 1907, c. 186, § 2.)

#### DISTRICT COURT—Ramsey County.

**Appointment—Oath—Term—Compensation.** The judge in any judicial district in this state which comprises hereafter comprise, a single county having a population 200,000 and less than 292,000 inhabitants, may appoint a reporter, who shall be a sworn officer of said court, and shall hold office during the pleasure of the judges so appointing him, and shall devote his entire time and attention to the duties of such office, and shall not accept other employment during his term. Said reporter shall be a person skilled in his profession and competent to discharge the duties of the office. The salary of said reporter shall be thirteen thousand dollars payable in money installments, by the county treasurer of the judicial district, from any funds in his hands, and shall be appropriated. Provided, However, That in case said judge shall be six in number, the compensation of said reporter shall be fifteen thousand dollars per annum for each additional judge. (c. 249, § 1.)

**Duties—Transcript Fees.** It shall be the duty of said reporter to take or cause to be taken full phonographic notes of all proceedings in said court before the judges so appointing him, directed by said judges; and said reporter shall act in the capacity of a private secretary to said judges whenever so directed by them, or in taking notes of any findings, decisions or dictations by said judges rendered in open court or at chambers, and said reporter shall, when requested by said judges, without charge therefor, transcribe any part thereof, for the use of said judges. For each copy of said notes, or any part thereof, at the request of any party to an action in said court, said reporter shall be entitled to charge and receive ten cents per folio of one hundred words, and three cents per folio for duplicate copy furnished to such party. And such transcript shall be taxable for the purposes of a case or bill of exceptions, may be taxed and allowed as other disbursements of the action. It shall also be the duty of said reporter to take and transcribe such notes of the testimony and proceedings in the juvenile division of said court as the judge therein presiding may direct without charge therefor. (Id., § 251; 1913, c. 249, § 2.)

## DISTRICT COURT—15th District.

**Appointment—Duties—Compensation.** In the Fifteenth Judicial District of the State of Minnesota, each judge may appoint a competent stenographer as reporter of the court to hold office and qualify in the same manner, perform the same duties and receive the same transcript fees as other court reporters under existing laws applicable to judicial districts which do not contain a city of the first class; and the judges of such district shall fix the salary of each reporter appointed therein at a sum not to exceed three thousand dollars per year by an order made and filed in the first instance with the respective county auditors of the district so affected on or before May 1st, 1915, and by subsequent orders made and filed with said county auditors annually on or before the first Monday in January, and all such orders shall apportion the salaries of the reporters among the several counties and require the payment thereof in the same manner as is now provided by Section 119 of the Revised Laws of the State of Minnesota for the year 1905, as amended by Chapter 168, General Laws of 1909. (Stats. 1915, Ch. 50.)

## MUNICIPAL COURTS.

**Appointment—Compensation—Duties.** The judge of said court may employ and appoint a shorthand writer, and fix his compensation, to make in shorthand writing a true record or report of the proceedings and evidence taken upon the trial of issues of fact in said court and of all examinations had therein; and, when required by the court or either of the parties to any such trial or examination, to transcribe such report or record into words which shall be represented by the characters used by him in reporting such proceedings or examination as the same shall occur. (Gen. Stats. 1894, § 1371.)

**Oath—Payment of Fees—Duties—Term—Compensation.** Before such reporter shall enter upon the performance of his duties he shall take and subscribe an oath similar to the oaths required of the reporters in the district court of this state, and file the same with the clerk of the court. The evidence and proceedings in trials of issues of fact in this court shall be reported in like manner as in the district court, provided the party calling for a reporter pays into the village treasury the amount ordered by the court, and shall be filed with the clerk of this court and remain so on file for the use of all parties interested. In the performance of his duties said reporter shall be subject to the orders and directions of the court, and the judge may at any time discharge such reporter, and employ and appoint another, and fix the compensation of said reporter not to exceed five dollars per day for the time actually employed to be paid out of the village treasury on the order of the judge of said court, and such expense shall be taxed in the costs of the case, for the use of the prevailing party, provided said party calls for and pays for said reporter. (Gen. Stats. 1894, § 1372.)

**Transcripts—Compensation for.** When the official reporter of said court shall be required by any of the parties to an action, proceeding or examination, to transcribe his record into ordinary writing or print, the parties requiring such transcript shall pay to the clerk of said court five cents per folio of one hundred words for each copy thereof, two-thirds of said amount to be paid to the reporter and one-third to the village treasurer. (Gen. Stats. 1894, § 1373.)

## MUNICIPAL COURT.—Minneapolis.

**Appointment—Qualifications—Oath—Term.** Each judge of the municipal court of the City of Minneapolis may appoint a stenographic reporter,

who shall be well skilled in his profession and competent to discharge the duties required, and who shall be a sworn officer of court, and shall hold his office during the pleasure of said judge so appointing him. (Gen. Laws, 1913, Ch. 517, Sec. 1.)

**Salary.** The salary of said reporter shall be eighteen hundred dollars per annum, payable in monthly installments by the city treasurer of the city of Minneapolis, from any funds in the city treasury not otherwise appropriated. (Id.)

#### MUNICIPAL COURT.—St. Paul.

The provisions of the Gen. Stats., 1894, *supra*, apply, except as to compensation. The following act fixes the compensation:

The stenographic reporter shall receive a salary of one thousand five hundred dollars per year, such salary being payable out of the city treasury of the city of St. Paul in equal monthly installments. (Gen. Laws, 1913, Ch. 430.)

**Transcript.** Follow provisions of Gen. Stats. 1894, § 1373, *supra*.

#### COMMITMENTS TO STATE PRISON OR REFORMATORY.

**Compensation for Synopsis of Testimony.** When testimony is furnished by the stenographer acting on the trial therefor by the county on certificate duly certified to by the trial judge, and filed with the county auditor, the same is provided by statute for transcripts of testimony furnished the same in civil proceedings. (Gen. Stats., 1913, § 9299;

# MISSISSIPPI

## CIRCUIT COURTS.

**Appointment—Qualifications.** Each judge of the circuit court may appoint a competent person as stenographer of the circuit court of his district, or any county or counties therein, by an entry upon the minutes of his court of an order to that effect, dated and signed by him. (Ann. Code, 1906, § 4785.)

**Oath.** Before entering upon his duties the stenographer shall take, in open court, an oath that he will faithfully discharge his duties as stenographer of the court; and that such oath was taken shall be entered in the minutes of the court. (Id., § 4786.)

**Term.** The stenographer when appointed and qualified by taking the oath required, thereby becomes an officer of the court, and shall hold his office as stenographer for the term of four years from the date of his appointment, unless sooner removed. (Id., § 4787.)

**Copy of Record Certified to Other Counties.** A copy of the writing by which the stenographer was appointed, and of the minutes relating to the stenographer's oath shall, at the cost of the stenographer, be certified by the clerk of the court in which the entries thereof are made, to the clerk of the circuit court in each of the several counties of the district for which the stenographer was appointed, to be entered on the minutes of the court in each county. (Id., § 4788.)

**Bond.** The judge shall require the stenographer to give bond in a penalty not less than two thousand dollars to be approved by the court, conditioned for the faithful discharge of his duties, and such bond shall be filed in the office of the clerk of the circuit court of any county in the district who shall, at the cost of the stenographer, certify a copy thereof to the clerk of said court in each of the other counties of the district, to be filed and preserved in his office, and said copies shall be competent evidence in any proceeding. And such bond shall be recorded at length in the bond record-book of the county where the original is filed. (Id., § 4789.)

**Duties.** The stenographer shall attend each session of the circuit court of the district for which he was appointed, from day to day, and, unless the same he waived, shall take, under the control of the judge, stenographic notes of all the oral evidence and proceedings, except arguments of counsel, in each case, civil and criminal, tried therein upon an issue of facts; and of any other matter or in any other case that the judge may especially direct. He shall carefully note the order in which the evidence, both oral and written, is introduced, and by whom it is introduced, giving the name of each witness, and identifying each deposition, exhibit, map, or other item of evidence or matter of proceeding by words or figures of description; and he shall carefully note all objections of counsel, rulings of the court, and exceptions of counsel, made during the trial, in the order in which the same occur. And upon demand of either party to any case, he shall, within twenty days from the conclusion of the trial thereof, or from the time of the demand, if made after the trial, neatly write out in full-hand or typewriting a complete copy of his stenographic notes as taken therein, with a caption showing the style of the case, its number, the court in which it was tried, and when tried, and certify, sign and file the same in the office of the clerk of the court in which the case was tried; and shall preserve his stenographic notes, in each case in which an appeal is taken, as a record of his office. If a party demand the writing out

of the stenographer's notes for any other than the bona fide purpose of perfecting an appeal, he shall pay the stenographer ten cents per hundred words for the same, and such work shall not delay the preparation of records for appeals. (Id., § 4790.)

**Extension of Time for Filing Transcript.** The judge, by an order entered on the minutes or filed among the papers of the case, may, when he deems it proper, grant a reasonable extension of the time in which the stenographer shall make out and file a copy of his stenographic notes in any case, and then the stenographer shall file such copy within the time fixed by the judge, subject to the penalties herein prescribed for a wilful neglect of duty. (Id., § 4791.)

**Compensation.** The stenographer shall receive for his services a salary of fifty dollars for each week or part of a week in which the court shall be held, payable out of the treasury of each county in which the court is held and the services are respectively performed, which shall be audited and allowed by the court at each session thereof; or in case of failure to do so, then at any subsequent session; and the board of supervisors shall order the issuance of a warrant for the same on presentation of a duly certified order of the circuit court allowing the claim. (Id., § 4792.)

**Penalty for Wilful Neglect of Duty.** If the stenographer wilfully neglects to perform any duty required of him by law, he shall be deemed guilty of a misdemeanor, and, on conviction thereof, may be fined not exceeding five hundred dollars, or imprisoned not more than six months; and, moreover, he shall be liable to a deduction from his salary at the rate of ten dollars a day for each day that he shall be in such default, which deduction shall be made by the court when it comes to audit and allow his salary, and in addition thereto he shall be liable on his bond to the party injured for all damages which may be sustained by reason of his neglect of duty. If any stenographer shall neglect or refuse to transcribe his official notes and to file such transcript within the time and in the manner required by law, or by order of the court or judge, he shall be liable upon his bond for a penalty in the amount of two hundred and fifty dollars, to be recovered by the party aggrieved thereby, whether the person aggrieved has suffered any actual damages or not. (Id., § 4793.)

**Stenographer Pro Tempore.** In case the court stenographer be absent during the session of the court, the judge may, by an order entered upon the minutes of the court, appoint a stenographer pro tempore, who shall be sworn to faithfully discharge his duties as such, and who shall perform all the duties and be liable to all the penalties and punishments prescribed for or incident to the office of court stenographer of the court, and who shall be paid for his services out of the salary of the regular stenographer, and at the same rate thereof, for the time that the stenographer pro tempore shall act, which shall be audited and allowed by the court. All acts of the stenographer pro tempore shall be as valid and effectual as if done by the regular stenographer; and such as are required to be certified and signed by the stenographer shall be certified and signed by him as stenographer pro tempore. (Id., § 4794.)

**Additional Stenographer.** When, in the judgment of the court, an additional official stenographer is necessary, he may be appointed by the court, and shall be paid the same salary and whose powers, duties and qualifications shall be the same as the official stenographer. Such additional official stenographer shall be discharged when, in the opinion of the court, his services are not necessary. (Laws of 1912, Ch. 161.)



**May Resign Office—When.** It shall not be lawful for the stenographer to resign or vacate his office so long as any business, upon the discharge of which he has entered, connected therewith is unfinished; but after such business has been completed as required by law, he may at any time resign or vacate his office; and his resignation shall take effect from the time he notifies the judge of the same. (Ann. Code, 1906, § 4795.)

**Removal.** The judge may at any time remove the stenographer from office for incompetency or neglect of duty, and may, as provided in the first section of this chapter, appoint a stenographer to fill the vacancy as often as such removals occur; and the clerk of the court shall certify such appointment, and a copy of the minutes of the court showing the appointee's qualification, to the clerk of the circuit court of each county in the district, as hereinbefore provided. (Id., § 4796.)

**Stenographer's Tax Fee.** In each case in which a stenographer shall serve a stenographer's tax fee of three dollars shall be taxed in the bill of costs, and collected and paid into the treasury of the county in which the case is tried, as the jury tax is by law collected and paid in. (Id., § 4797.)

#### CHANCERY COURTS.

**Appointment.** In all jury trials in the chancery courts of this state, and in other proceedings in said courts in which oral testimony is allowed or required to be introduced, the chancellor, holding such court, is hereby empowered at his discretion to appoint a stenographer in such case or cases before him, to take down, under the direction and control of said chancellor in stenographic notes, the oral testimony so introduced, and to reduce the same to typewriting thereafter as said court may direct. (Laws of 1908, Ch. 130, § 1.)

**Compensation—Tax Fee.** The chancellor shall fix the pay such stenographer shall receive for his services in such case or cases not exceeding ten dollars for each day or portion thereof, in which he shall so serve, to be paid on the order of the chancellor as stenographers in circuit court are now provided by law to be paid. And in each case in such court in which a stenographer shall so serve a stenographer's tax fee of three dollars shall be taxed in the bill of costs and collected and paid into the county treasury as in like cases in the circuit court. (Id., § 2.)

**Law as to Circuit Courts to Apply to.** All the provisions of law now in force, or that may hereafter be enacted, as to the duties of stenographers in the circuit court in the taking of testimony, exceptions of counsel, rulings and orders of court, and in preparing and filing bills of exceptions in cases of appeal to the Supreme Court, shall apply so far as may be applicable to similar services by stenographers in the circuit court; and they shall be subject to the same penalties for neglect of duty as now provided by law, except that the chancellor may relieve them from giving bond in such cases. (Id., § 3.)

**Habeas Corpus Proceedings.** In habeas corpus proceedings the judge or chancellor may in like manner appoint a stenographer, who shall take the testimony of witnesses and typewrite the same as in cases in the circuit court, when such copy is demanded by either party. (Id., § 4.)

#### BILLS OF EXCEPTIONS.

**Transcript in Lieu of, When.** In all cases tried either in the circuit or chancery court in which the evidence is taken down by an official stenog-

rapher, all pleadings and all papers filed in the case, all orders of the court entered on the minutes, all instructions and a copy of the stenographer's notes shall constitute the record and no bill of exceptions shall be necessary in order to make any of the above matters part of the record. (Laws of 1910, Ch. 111.)

**Stenographer to Make Transcript—When.** In all cases in which the evidence is noted by the official stenographer, any person desiring to appeal the case shall notify the stenographer in writing within thirty days of the adjournment of court of the fact that a copy of the notes is desired. This notice must be handed to the stenographer personally, or mailed to him at his usual place of abode. Upon receipt of such notice it shall be the duty of the stenographer to transcribe his notes within sixty days of the date of such notice. When the notes shall be transcribed the stenographer shall mail or deliver personally, to each attorney or firm, shown by the record to be interested in the case, written notice that the notes have that day been forwarded or delivered to the clerk of the court, and shall append to the copy of his notes his certificate of the fact that such notice has been so mailed or delivered, giving the names and addresses of the attorneys or firms so notified. It shall be the duty of the stenographer to forthwith upon the completion of the transcript of his notes and the mailing or delivering of the notices aforesaid, to deliver in person or forward the transcribed notes by registered mail, to the clerk where the case was tried. (Provision is made for examination of transcript by counsel, and approval of the same by the court.) (Id.)

**Extension of Time.** If the stenographer find that he will not be able to complete his transcript of the notes in any case within the time prescribed by law, he may apply to the circuit judge for an extension of time, who may, either in term time or in vacation, grant such extension of time, not to exceed sixty days additional time, as the judge may deem consistent with justice. (Id.)

**Penalty for Failure to Make Transcript.** In case any stenographer shall refuse or neglect or omit to perform any duty imposed upon him by the foregoing three sections, besides being liable in damages on his official bond, he shall be subjected to a fine of not less than \$100 nor more than \$500, and for the second offense shall be removed from office. This punishment may be inflicted by the trial judge of his own motion, or any interested party may lodge a written complaint against the stenographer, upon the filing of which in the proper court and the presentation to the trial judge, a time and place shall be fixed by the judge for hearing the complaint, of which five days' notice shall be given the stenographer. Either party may take an appeal to the Supreme Court, within thirty days after the rendition of the judgment, from the decision of the judge, and the Supreme Court shall have the right to remove the stenographer from office, if it thinks proper. (Id.)

**Transcript Not Stricken unless Materially Incorrect.** Provided notice as above is given to the stenographer by the appellant or his counsel within thirty days after the conclusion of the term of court, no stenographer's transcript of his notes shall be stricken from the record by the Supreme Court, for any reason, unless it be shown that such notes are incorrect in some material particular, and then only in case where such notes have never been signed by the trial judge, nor been agreed on by the parties, nor become a part of the record by operation of law. (Id.)

**Loss of Transcript, or Death of Stenographer.** If the original, or the copy of the stenographer's transcribed notes shall be lost or destroyed, or

defaced in any manner, or if the stenographer should die, resign or be unable to transcribe his notes and furnish a typewritten copy of his notes, sixty days additional time shall be allowed for the preparation of the bill of exceptions, or as the case may be, another copy of the transcribed notes. In case a copy of the transcribed notes cannot be furnished, a bill of exceptions may be prepared within the time hereafter stated, just as in cases where no stenographer takes down the evidence. In case of the death of the stenographer before filing a copy of his notes of the evidence and proceedings in any case, or of his failure to file the same within sixty days after notice served upon him by the appellant, or within any extended time, the party taking the appeal may, within forty days after the forty, sixty, ninety or other extended time, prepare and present to the judge a bill of exceptions, as if there had not been a stenographer therein, etc. (Id.)

# MISSOURI

CIRCUIT COURTS—Counties and Cities having 350,000 inhabitants or more  
(\*City of St. Louis.)

**Appointment—Oath—Bond—Term.** For the purpose of expediting the public business and preserving an accurate report of proceedings in the trial of causes without expensive delays, the judge of the Circuit Court, or when said court consists of more than one judge, then the judge of each division thereof, in all cities and counties in this state which may hereafter have a population of three hundred and fifty thousand inhabitants or more, is authorized to appoint one official stenographer for such court or division. Such stenographer shall be an official of said court, and shall file therein an affidavit to discharge faithfully and impartially the duties of such office, and shall also file therein a bond to the State of Missouri, in the sum of three thousand dollars, with two sureties approved by said judge, conditioned for the faithful and impartial discharge of said duties, upon which any person injured by breach thereof may maintain an action as upon other official bonds. Such stenographer shall hold his office until removed by an order of such judge, or by an order of such judge appointing a successor. (Rev. Stats. 1909, § 11231; R. S. 1899, § 10105.)

**Duties.** It shall be the duty of each official stenographer so appointed to attend the sessions of the court, or division to which he is assigned, according to the direction of the judge thereof, to take full stenographic notes of the oral evidence offered in every case tried in said court or division, and of other proceedings, when directed by said judge to be so reported, together with all objections to the admissibility of testimony, and the rulings of the court thereon, and all exceptions taken to such rulings; to preserve all official notes taken in said court for future use or reference, and to finally deposit the same with the records of said court, according to the directions of the judge thereof; and to furnish any person a longhand transcript of all or any required part of said evidence or oral proceedings, upon the payment to him of the fees hereinafter provided. When not reporting in open court it shall also be his duty to take such notes as may be requested by the judge in chambers, and to furnish the latter a transcript thereof when required. (Id. § 11232; Id. § 10106.)

**Compensation—Salary and Transcript Fees.** Each official stenographer shall receive as compensation for his services the sum of eighteen hundred dollars per year, which shall be paid in installments of one hundred and fifty dollars at the end of each month of said year, by the treasurer of the city wherein the court of which he is a stenographer is situated, upon presentation to said treasurer of vouchers duly approved and certified by the judge in whose division of court said stenographer is employed. Each stenographer shall also receive from any person ordering longhand transcripts of his notes such fees for the same as may be from time to time established by orders of said court or judges, as mentioned in § 11231 of this Article, not exceeding, however, fifteen cents per folio of one hundred words, each four figures to be also counted as one word; and any judge of any court may, in his discretion, order a transcript of all or any part of the evidence or oral proceedings for his own use, and the stenographer's fees for making the same shall be taxed in the manner as other costs in the case. (Id. § 11233; Id., § 10107.)

**Fee to be Taxed in Each Case.** In every case, except in suits by the state for the collection of delinquent taxes, now or hereafter pending in any

\*The City of St. Louis is in no county.

circuit court or division thereof, where an official stenographer is appointed, the clerk of said court shall tax up the sum of three dollars to be collected as other costs, and thereupon to be paid by said clerk to the city treasurer, to apply to the payment of salary of such stenographers as above. (Id., § 11234; Id., § 10108.)

**Deputies.** Each official stenographer may appoint one or more deputies when necessary to assist him in the discharge of his duties, by a written appointment, approved by said court and filed therein, and shall be answerable for the proper performance of the duties of such deputy; and the compensation of the latter shall be paid by such stenographer. (Id., § 11235; Id., § 10109.)

**May Exchange Work.** The stenographers or deputies in the several divisions of said court may, with the approval of the judges thereof, interchange with each other or report for each other in any of the divisions of said court, and shall otherwise conform to such regulations as may be made by said court or the judges in their several divisions touching the performance of their duties. (Id., § 11236; Id., § 10110.)

**CIRCUIT COURTS**—Counties having more than 100,000 and less than 350,000 inhabitants. (Jackson County.)

**Appointment—Qualifications—Oath—Term.** For the purpose of preserving the record in all cases for the information of the court, jury and parties, and for expediting the public business, the judges of the circuit courts of the State of Missouri, in counties that now have or may hereafter have a population of more than one hundred thousand and less than three hundred and fifty thousand inhabitants shall appoint an official stenographer for each court or division of said circuit court, who shall be well skilled in the art of stenography, and shall have had at least two years of actual practice in court reporting, although not required to have been an official reporter of any court, and be not less than twenty-one years of age. Such stenographer shall be a sworn officer of the court, and shall hold his office during the term of the judge appointing him. Provided, however, that the judge shall, at any time, have power to remove such stenographer upon proper charges, entered of record, for incompetency or any misconduct in office, specifying such misconduct, and giving such stenographer an opportunity of being heard. (Rev. Stats. 1909, § 11237; R. S. 1899, § 10111.)

**Duties.** It shall be the duty of the official stenographer so appointed, to attend the sessions of the court, under the directions of the judge thereof; and to take full stenographic notes of the oral evidence offered in every case tried in said court, together with all objections to the admissibility of testimony, the rulings of the court thereon, and all exceptions taken to such rulings; to preserve all official notes taken in said court for future use or reference, and to furnish to any person a transcript of all or any part of said evidence or oral proceedings upon the payment to him of the fee hereinafter provided. (Id., § 11238; Id., § 10112.)

**Compensation—Per Diem.** The official stenographer appointed under the provisions of this article shall receive as per diem compensation the sum of ten dollars for each and every day in attendance upon the court for which he is appointed, and the amount so allowed shall be certified to the county by the circuit judge, and the county court shall issue a warrant upon the treasurer therefor. (Id., § 11239; Id., § 10113.)

**Compensation—Transcript Fees.** Said stenographer, except as in the next section provided, shall receive from the person or persons ordering transcripts of his notes the sum of fifteen cents per folio of one hundred

words for each transcript furnished; and the judge of the court may, in his discretion, order a transcript or extract of any part of the evidence or oral proceedings for his own use, and the stenographer's fees for making the same shall be taxed in the same manner as other costs in the case. (Id., § 11240; Id., § 10114.)

**Compensation for Duplicate Copies in Certain Cases.** In any case taken by appeal or writ of error from said circuit court, where it is necessary to present a transcript of the testimony or proceedings therein to any appellate court for a review of said cause, after the bill of exceptions shall have been settled, which shall contain all the testimony and proceedings on the trial of said cause, or so much thereof as may be necessary for the purposes of the appeal or review, the official stenographer shall be required, when thereto requested by either appellant or plaintiff in error to furnish and file in the office of the clerk of said court duplicate copies thereof certified to officially, and for the making of such duplicate copies, said stenographer shall receive from the party who shall take such appeal or sue out such writ of error, the sum of five cents per folio, and the total amount of his fee for making the original transcript and said duplicate copies shall be paid at the time of making said transcript and copy by the party at whose instance the same is made; and this amount, when so paid, shall be taxed as costs to abide the result of the case. Provided, however, that if the cause be reversed in the appellate court, the cost of the transcript and copy for the appellate court shall be taxed against the losing party in the appellate court. Said certified additional copy shall be inserted by the clerk of said court in his certified transcript of the record of the case, which is transmitted by him to the appellate or reviewing court, without re-copying or charging for re-copying the same. (Id., § 11241; Id., § 10115.)

**Fee to be Taxed in Each Case, Except.** In every case tried, except for the collection of delinquent or back taxes, in any circuit court or division thereof, where an official stenographer is appointed, the clerk of said court shall tax up the sum of three dollars, to be collected as other costs, and paid by said clerk into the county treasury, toward reimbursing the county for the compensation allowed such stenographer as hereinbefore provided. (Id., § 11242; Id., § 10116.)

**May Appoint Deputies.** Such official stenographer may appoint one or more deputies to assist him in the discharge of his duties, but he shall not be allowed any additional compensation on account of such deputies. Provided, however, that any deputy may be removed in like manner as the official stenographer. (Id., § 11243; Id., § 10117.)

**CIRCUIT AND CRIMINAL COURTS**—Counties having more than 45,000 and less than 150,000 inhabitants. (Buchanan, St. Louis and Greene counties.)

**Appointment—Qualifications—Oath—Term.** For the purpose of preserving the record in all cases for the information of the court, jury and parties, and for expediting the public business, the judges of the circuit courts of the state of Missouri, for counties having a population of more than forty-five thousand and less than one hundred and fifty thousand inhabitants, shall appoint an official stenographer for each court or division thereof of said circuit court, who shall be well skilled in the art of stenography, and shall have had at least three years actual practice in court reporting. Such stenographer shall be a sworn officer of the court, and shall hold his office during the term of the judge appointing him. (Rev. Stats. 1909, § 11244; R. S. 1899, § 10118.)

**Duties.** It shall be the duty of the official stenographer so appointed to attend the sessions of the court, under the direction of the judge thereof; to take full stenographic notes of the oral evidence offered in every case tried in said court, together with all objections to the admissibility of testimony, the rulings of the court thereon, and all exceptions taken to such rulings; to preserve all official notes taken in said court for future use or reference, and to furnish to any person a transcript of all or any part of said evidence, or oral proceedings, upon the payment to him of the fee hereinafter provided. (Id., § 11245; Id., § 10119.)

**Compensation—Per Diem and Transcript Fee.** The official stenographer appointed under the provisions of this article shall receive, as per diem compensation, the sum of ten dollars for each and every day in attendance upon the court for which he is appointed, and the amount so allowed shall be certified to by the judge thereof and paid said stenographer quarterly by the county treasurer, upon a warrant drawn by the county court. Said stenographer shall also receive from the person or persons ordering transcripts of his notes the sum of fifteen cents per folio of one hundred words for each transcript furnished; and the judge of the court may, in his discretion, order a transcript of all or any part of the oral evidence or proceedings for his own use, and the stenographer's fees for making the same shall be taxed in the same manner as other costs in the case; Provided, that in criminal cases where an appeal is taken or a writ of error obtained by the defendant, and it shall appear to the satisfaction of the court that the defendant is unable to pay the costs of such transcript for the purpose of making the appeal, the court shall order the same to be furnished, and the stenographer's fees for making the same shall be taxed against the state or county, as may be proper; and in such cases the stenographer shall furnish to the defendant one transcript of his notes of the evidence, for which transcript he shall receive, as compensation therefor, the sum of ten cents per one hundred words; and, in addition thereto, when requested so to do by the clerk of said court such stenographer shall furnish an additional copy of the transcript of the evidence, and shall receive, as his compensation therefor, the sum of five cents per hundred words, and the clerk in making the transcript of any bill of exceptions filed in the cause, shall, without copying the same, incorporate the copy of the stenographer's transcript so furnished him, into the transcript made by the clerk, for the appellate court, making the same conform to the bill of exceptions as filed: and said clerk shall receive nothing for that part of his transcript so furnished him by said stenographer. (Id., § 11246; Id., § 10120, amended Laws. 1905, p. 306.)

**Fee to be Taxed in All Cases, Except.** In every case, except in suits for the collection of delinquent or back taxes, and all other suits that are settled without going into trial, now or hereafter pending in any circuit court or division thereof, where an official stenographer is appointed, the clerk of said court shall tax up the sum of three dollars, to be collected as other costs and paid by said clerk to the county treasurer, to apply on the payment of the per diem compensation allowed such stenographer as hereinbefore provided. (Id., § 11247; Id., § 10121.)

**May Appoint Deputies.** Such official stenographer may appoint one or more deputies, when necessary, to assist him in the discharge of his duties. (Id., § 11248; Id., § 10122.)

**In Criminal Courts—Above Provisions Apply.** The judges of the criminal courts within counties that now have, or may hereafter have, a population of more than forty-five thousand and less than one hundred and fifty

thousand population, are hereby authorized to appoint an official stenographer for such court, subject to the same provisions of law as are now applicable to the circuit courts within such counties. (Id., § 11249; Id., § 10123.)

**CIRCUIT AND CRIMINAL COURTS**—Counties having 45,000 inhabitants and less.

**Appointment.** The judge of each circuit or criminal court, within counties having a population of forty-five thousand inhabitants or less, may appoint a competent official stenographer, to attend during any term of such court or any part thereof. (Rev. Stats. 1909, § 11250; R. S. 1899, § 10124.)

**Examination—Qualifications—Certification.** Before any person can be appointed in the first instance an official stenographer of any court contemplated by the next preceding section, he shall be examined as to his competency by a committee of at least three members of the bar practicing in said court, such committee to be appointed by the judge thereof; the test of competency shall be as follows: The applicant shall write in the presence of such committee at the rate of at least one hundred and twenty words a minute for five consecutive minutes, from questions and answers not previously written by him and transcribe the same with accuracy. If the applicant pass this test satisfactorily a majority of the committee shall furnish him with a certificate of that fact, which shall be filed in the records of the court. Upon the occasion of subsequent appointments, the presentation of a certified transcript from the clerk of the court of the certificate above mentioned shall be taken as prima facie evidence of the stenographer's competency. (Id., § 11251; Id., § 10125.)

**Duties.** Such stenographer shall report his arrival at court, and also his discharge therefrom to the clerk, who shall make a minute thereof upon his journal; he shall be sworn to a faithful performance of his duty, and shall remain in attendance upon the court until discharged therefrom by the judge thereof, and shall, when directed, by the court, take full stenographic notes in every case tried during such attendance of all the oral testimony, the admissions made by either side, the objections to the introduction of testimony, the rulings of the court thereon, and the exceptions taken thereto, and such other proceedings as the court may direct, and shall preserve and furnish a transcript of such stenographic notes, or all or any part thereof, to any person having an interest therein, upon payment of the fee hereinafter prescribed. (Id., § 11252; Id., § 10126.)

**Fee to be Taxed in Certain Cases.** In every case, except in suits by the state for the collection of delinquent taxes, tried, in which the stenographer is used in any circuit court in counties having 45,000 inhabitants or less, the clerk of said court shall tax up the sum of two dollars, to be collected as other costs, and thereupon to be paid by said clerk to the county treasurer, to apply to the payment of salary of stenographer. (Id., § 11253; Id., § 10127, amended Laws 1907, p. 441, Laws 1909, p. 867.)

**Compensation—Salary, How Paid.** The official stenographer appointed for any entire circuit composed of a county or counties having forty-five thousand inhabitants or less, shall receive as compensation for his services the sum of twelve hundred dollars per annum, to be paid proportionally by each county in said circuit as the population of such county bears to the entire population of the circuit. Such salary to be paid in monthly installments by the treasurer of each county, upon a certificate from the judge of said circuit, setting forth the proportionate part each county shall pay, which certificate shall be a proper voucher to the treasurer for the amount



so paid: Provided, however, where there is more than one stenographer appointed in any circuit, he shall receive for his services the proportionate part only which such county in which he is appointed pays in proportion as its population bears to the entire population of the circuit. (Id., § 11254; Id., § 10128, amended Laws 1909, p. 867.)

**Expenses While in Attendance.** Every official stenographer of a circuit court or of a criminal court in this state, in counties having 45,000 inhabitants or less, shall be allowed and paid all sums of money actually expended by him in necessary hotel and traveling expenses while engaged in attending any regular, special or adjourned term of court at any place in the circuit in which he is appointed such official stenographer, or other than the place of his residence therein, or while engaged in going to and from any such place for the purposes of attending such terms of court: Provided, however, that said necessary hotel and traveling expenses shall be limited to the sum of two dollars per day, and such sums of money for said expenses shall be paid out of the county treasury of the county in which said term of court shall be held in the same manner that the per diem of official stenographers in counties having 45,000 inhabitants or less are now paid by law; but such necessary expenses shall include nothing except actual traveling fare and not more than two dollars each day for board and lodging, and no money shall be paid from the treasury of any county under the provisions of this section until the judge of the circuit or criminal court of said county shall approve an itemized account showing all such actual expenses incurred by said official stenographer. (Id., § 11255; Laws 1903, p. 270.)

**Compensation in Criminal or Common Pleas Courts.** The stenographer appointed in any criminal court or court of common pleas within counties having 45,000 inhabitants or less shall receive as compensation for his services the sum of five dollars per day for each and every day of attendance officially upon any court; the amount so allowed shall be paid said stenographer by the county treasurer of the county upon the presentation of a certificate from the judge of said court in which the services were rendered, which certificate shall be a proper voucher to the treasurer for the amount so paid: Provided, however, that said stenographer shall not be allowed more than one per diem for any one day's services, even though he be used in more than one case on the same day. (Id., § 11256; Laws 1909, p. 867.)

**To Make Transcripts—Compensation—Duplicate Free in Certain Cases.** For furnishing a transcript of his stenographic notes or any part thereof, the stenographer of any of said courts, or any division thereof, shall receive as compensation therefor the sum of ten cents per folio of one hundred words; and in all cases of appeal or writ of error it shall be the duty of such stenographer, upon the application of the appellant or plaintiff in error, to make out upon a typewriter two transcripts in duplicate of his notes of the evidence, or such part thereof as may be requested, one of which copies he shall deliver to the party ordering the same, and the other deposit with the clerk of the court in which the case is pending, for which said stenographer shall be entitled to be paid for one copy only at the rate hereinbefore prescribed, and for the other copy nothing; and the clerk, in making the transcript of any bill of exceptions filed in the cause, shall, as far as possible, without copying the same, incorporate the stenographer's transcript so filed with him into the transcript made by the clerk for the appellate court, making the same conform to the bill of exceptions as filed, and shall receive as his fees, for that part of the stenographer's transcript so incorporated only, the sum of five cents per hundred words: Provided, that in criminal cases, where an appeal is taken or writ of error obtained by the defendant, and it shall appear to the satisfaction of the court that the de-

pendant is unable to pay the costs of such transcript for the purpose of making the appeal, the court shall order the same to be furnished, and the stenographer's fees for making the same shall be taxed against the state or county as may be proper; and in such case the stenographer shall furnish two transcripts in duplicate of his notes of the evidence, for one of which transcripts he shall receive ten cents per hundred words, and shall receive no compensation for the other. (Id., § 11257; R. S. 1899, § 10129.)

**Appointment, How Made—Bond.** The regular official stenographer provided for by this article shall be appointed as such, by an order entered of record, by the circuit court of any county in the judicial circuit over which said judge presides, and in which said stenographer proposes to discharge the duties of his office. Before entering upon his official duties, the stenographer provided for by this article shall, on entering upon the discharge of his duties, execute to the state of Missouri a bond, with two or more sufficient sureties therein (to be approved by the circuit court of the county in which said stenographer is appointed, by an entry of record to that effect) in the sum of one thousand dollars for the faithful performance of the duties of his office. Said bond shall be conditioned for the faithful performance of his duties, not only in the county where appointed, but likewise in every county in said circuit in which he may act as such stenographer. Said bond shall be filed in the office of the clerk of the county court in the county in which said bond is approved and by said county clerk safely preserved, and may be sued on in the name of the state of Missouri, to the use of any person, persons or corporation injured by reason of breaches thereof, or failure to perform and discharge his duties in any part of said judicial circuit. The provisions of this section shall apply to stenographers now in office who shall comply with its requirements within thirty days after the same becomes a law. This section shall not be construed to prevent the court, in case of an emergency, or, if the occasion so requires, from appointing a temporary stenographer, who may discharge the duties of the office without being required to give bond, as hereinbefore required, and such temporary stenographer shall receive as compensation for his services, the sum of five dollars per day for each and every day of attendance officially upon any court, and in addition thereto, all sums of money actually expended by him in necessary hotel and traveling expenses while engaged in attending said court, the same to be paid in the manner now prescribed in § 11256 of this article: Provided, that such temporary stenographer shall not act or serve as such for a time longer than thirty days, at any one time, without complying with this section. (Id., § 11258; Laws 1907, p. 439, as amended by Laws 1915, p. 392.)

#### CRIMINAL COURTS HAVING JURISDICTION OF FELONIES—In Counties and Cities of over 100,000 inhabitants.

**Appointment—Term.** In cities and counties having a population of over one hundred thousand inhabitants, courts having jurisdiction in cases of felony shall have a stenographic reporter, such reporter to be appointed by the court to hold his office from month to month, during the pleasure of said court, or until removed for cause shown, as hereinafter provided. (Id., § 11259; R. S. 1899, § 10130.)

**Salary.** The stenographer so appointed shall receive a monthly salary of one hundred and fifty dollars, payable at the end of each month by the treasurer of said city, where such court sits exclusively within such city, and where such court sits at more than one place within such county, then by the county court of such county, upon presentation to such treasurer, or such county court, of vouchers duly approved by the clerk of said court. (Id., § 11260; Id., § 10131.)

**Oath.** Such reporter, before entering upon the discharge of his duties, shall take an oath, before some competent person, to faithfully discharge the duties of reporter of said court. (Id., § 11261; Id., § 10132.)

**Duties.** Such reporter shall attend upon said court, as directed by the judge thereof, and shall take accurate shorthand notes of the evidence, proceedings had, instructions given by the court, and arguments made, and all other pertinent matter, and shall also attend upon any examination of a criminal matter, when directed by the prosecuting officer, and shall furnish transcripts of his said notes, or any part thereof, in legible English, for the use of the state, when so directed by the judge of the court. (Id., § 11262; Id., § 10133.)

**Notes Filed—Grand Jury Work—Transcript Fees.** All shorthand notes of examination in criminal matters, other than regular trials thereof, shall be turned over at once by said reporter to the prosecuting officer of the court. But all other shorthand notes taken by said reporter shall be filed by him in the clerk's office of said court, and shall become a part of the record of said court, and such reporter shall transcribe, in legible English, any of such notes, or any part thereof, whenever required by the clerk so to do; and such clerk shall make out certified copies of such transcript or longhand notes for any person upon the payment of legal fees allowed by law for copies of records and papers, except that whenever said reporter shall be required to take notes before the grand jury he shall be sworn to secrecy, and all such notes so taken shall also be turned over by said reporter to the prosecuting officer of said court; and provided, that in cases of appeal and on motions for new trial, the transcript of the evidence shall be furnished to the defendant upon the order of the court without cost to said defendant when it shall appear to the satisfaction of the court that the defendant is unable to pay the cost of such transcript for the purpose of making such appeal; and provided further, that the stenographer shall be allowed for making such transcript the sum of fifteen cents per folio of one hundred words for each transcript so furnished; and when the court shall be satisfied that the defendant is unable to pay for making such transcript, the same shall be taxed as costs in the case against the state or county, as may be proper. (Id., § 11263; R. S. 1899, § 10134, amended Laws 1907, p. 440.)

**Substitute.** In case of the temporary absence of such reporter, from any cause, the court may appoint a skillful shorthand reporter in his place, who shall take the same oath, and for the time being shall perform the same duties and labors and receive the same compensation, pro rata, as the regular reporter. (Id., § 11264; R. S. 1899, § 10135.)

**Removal—Punishment.** If said reporter shall fail to perform, in whole or in part, faithfully, the duties, obligations and labors enjoined upon him in this article, he shall be at once removed by the court, upon any application of any responsible person showing good cause therefor by competent evidence, and if said reporter shall be guilty of any willful or corrupt misconduct or neglect in the discharge of any of the duties, obligations or labors required to be by him performed by any of the provisions of this article, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the city jail for a term of not exceeding one year. (Id., § 11265; Id., § 10136.)

# MONTANA

## DISTRICT COURTS.

**Appointment—Term—Oath.** The judge of a district court may appoint a stenographer for such court, who is an officer of the court, and hold his office during the pleasure of the judge appointing him, and he must subscribe the constitutional oath of office, and file the same with the clerk of the court. In districts where there are two or more judges, each judge may appoint a stenographer. (Rev. Codes, 1907, § 6373.)

**Duties—What Taken—Filing of Notes.** Each stenographer must, under the direction of the judge, attend all sittings of the court, take full stenographic notes of the testimony and of all proceedings given or had thereat, except when the judge dispenses with his services in a particular cause, or with respect to a portion of the proceedings therein. The stenographer must file with the clerk forthwith the original stenographic notes taken upon a trial or hearing required to be taken by this section. (Id., § 6374.)

**Duties—Transcript of Exceptions.** All objections made, the rulings, decisions and opinions of the court, and the exceptions taken during the trial, or hearing, must be written out at length, or printed in type, by the stenographer and filed with the clerk forthwith after the close of the trial, or hearing, and thereafter such exceptions may be settled in a bill of exceptions, as provided in § 6788 of this code. (Id., § 6375.)

**Transcripts for Parties—Compensation for.** Each stenographer specified in this title must likewise, upon request, furnish, with all reasonable diligence, to the defendant in a criminal cause, or a party or his attorney, in a civil cause, in which he has attended the trial or hearing, a copy, written out at length or in narrative form, from his stenographic notes, of the testimony and proceedings, or a part thereof upon the trial or hearing, upon payment by the person requiring the same, the sum of five cents per folio for the copy written out at length, and seven and one-half cents per folio for the copy written out in narrative form. If the county attorney or attorney general or judge requires such copy in a criminal cause, the stenographer is entitled to his fees therefor; but he must furnish it, and upon furnishing it he shall receive a certificate of the sum to which he is so entitled, which is a county charge, and must be paid by the county treasurer upon the certificate like other county charges. If the judge requires such a copy in a civil case to assist him in rendering a decision the stenographer must furnish the same without charge therefor. If it appears to the judge that a defendant in a criminal case is unable to pay for such copy, the same shall be furnished him and paid for by the county. (Id., § 6376; Act approved March 12, 1895.)

**Reporting Fee Collected by Clerk—Taxed as Costs.** In every issue of fact in civil actions tried before the court or jury before the trial commences, there must be paid into the hands of the clerk of the court, by each party to the suit, the sum of three dollars, which sum must be paid by said clerk into the treasury of the county where the cause is tried, to be applied upon the payment of the salary of the stenographer, and the prevailing party may have the amount so paid by him taxed in his bill of costs, as proper disbursements. (Id., § 6377.)

**Salary and Mileage.** Every stenographer appointed under the provisions of this title receives an annual salary of twenty-four hundred dollars, and no other compensation except as provided in § 6376 of the Revised Codes of Montana of 1907, payable in monthly installments out of the contingent funds of the counties comprising the district for which he is appointed,

according and in proportion to the number of suits entered and commenced in the district courts of such counties respectively in the preceding year; and it shall be the duty of the judge of such district on the first day of January of each year, or as soon after as may be, to apportion the amount of such salary to be paid by each county in his district on the basis aforesaid. The stenographer is allowed in addition to the salary and fees above provided, in judicial districts comprising more than one county, a mileage of ten cents per mile for the distance traveled by him from one county seat to another in the performance of his official duties, said mileage to be apportioned and payable in the same way as salary. (Id., § 6378; Act approved March 4, 1909.)

**Stenographer Pro Tempore.** The stenographer of any district court must attend to the duties of his office in person, except when excused for good and sufficient reason by order of the court, which order must be entered upon the minutes of the court. Employment in his professional capacity elsewhere is not a good and sufficient reason for such excuse. When the stenographer of any court has been excused in the manner provided in this section, the court may appoint a stenographer pro tempore, who must take the same oath and perform the same duties and receive the same compensation during the time of his employment as the regular stenographer. (Id., § 6379.)

**Transcript Prima Facie Evidence.** The report of the stenographer, or stenographer pro tempore, of any court, duly appointed and sworn, when written out in longhand writing, or printed in type, and certified as being a correct transcript of the testimony and proceedings in the case, is prima facie a correct statement of such testimony and proceedings. (Id., § 6380.)

# NEBRASKA

## COURT OF IMPEACHMENT.

**Appointment—Compensation.** The court of impeachment may appoint a shorthand reporter, who shall receive such an allowance as the court of impeachment may authorize, to be by them reported for the consideration of the legislature at its next session. (Rev. Stats. 1913, 1131, § 4.)

## DISTRICT COURTS.

**Appointment—Qualifications—Shall Not Practice Law in District.** There shall be appointed within and for each of the judicial districts of this state, by the district judge, a stenographic reporter, who shall be well skilled in the art of stenography, and capable of reporting the oral proceedings had in court verbatim; and said reporter or his deputy shall not be allowed to practice law in the district court within and for the district he is appointed, during the tenure of his office as such stenographer. (Rev. St. Neb. 1913, 1196, § 69.)

**Oath—Term of Office—Compensation.** The said reporter shall take the oath required to be taken by judicial officers, shall hold his office during the pleasure of the district judge, and receive an annual salary of two thousand dollars, to be paid by the state as the salary of other officers is paid. (Id. 1197, § 70.)

**Duties.** The said reporter shall attend all terms of the district court held within and for the district for which he is appointed, and shall make a stenographic report of all oral proceedings had in such court, including the testimony of witnesses, with the questions to them, verbatim, and any further proceedings or matter when directed by the presiding judge so to do; but the parties may, with the consent of the judge, waive the recording by such reporter of any part of the proceedings herein required to be taken; this shall not include arguments to the jury. And whenever, during the progress of the cause, any question arises as to the admissibility or rejection of evidence or any other matter causing an argument to the court, such argument shall not be recorded by the reporter, but he shall briefly note the objection made and the ruling of the court thereon, and any exceptions taken by either party to such ruling. (Id. 1198, § 71.)

**Office—Preservation of Notes.** The said reporter shall keep and maintain an office within the district for which he shall be appointed, and shall keep and preserve in his said office all stenographic reports made by him as in this article required. Such records shall be the property of the state, and upon the termination of his office, the said reporter shall deliver the same to his successor in office. (Id. 1199, § 72.)

**Transcripts—Time in Which Made—Compensation—How Paid.** It shall be the duty of such reporter to furnish, on the application of the county attorney or any party to a suit in which a stenographic report of the proceedings has been made, a longhand copy of the proceedings so recorded, or any part thereof, for which he shall be entitled to receive in addition to his salary, a fee of ten cents per hundred words, to be paid by the party requesting the same; except, where such copy is required by the county attorney, his fee therefor shall be paid by the county in the same manner as other claims are paid; Provided also, in criminal cases, wherein, after conviction, the defendant shall make an affidavit that he is unable by reason of his poverty to pay for such copy, the court or judge thereof may, by order endorsed on such affidavit, direct the reporter to deliver such longhand copy

to such defendant, and his fees therefor shall be paid by the county in the same manner as other claims are allowed and paid. It shall be the duty of the reporter to deliver such longhand copy of the proceedings therein, including all remarks of the court made in the presence of the jury, within forty days from the final adjournment of the term at which the judgment is rendered, to the party demanding it. (Id. 1200, § 73.)

**Deputy.** The stenographic reporters within and for each of the judicial districts of this state may severally, each with the consent of the judge of the district in which he acts, appoint as deputy a person well skilled in the art of stenography and capable of reporting the oral proceedings had in court verbatim. (Id. 1201, § 74.)

**Oath, Duties and Compensation of Deputy.** A deputy reporter so appointed shall take the oath required to be taken by judicial officers, and may perform the duties of the reporter as provided by law, and the reporters of the court shall pay for the services of such deputy. (Id. 1202, § 75.)

**Compensation for Other Than Court and Deposition Work.** When the services of a shorthand reporter shall be required in any matter other than district court work and the taking of depositions, such reporter shall receive for his services not to exceed five dollars per day while engaged in the actual taking of testimony or proceedings; and in addition thereto ten cents per hundred words, and no more, for the original longhand copy thereof; and when ordered by the parties to the proceedings, two and one-half cents per hundred words, and no more, for each of the first three carbon copies, and one cent per hundred words for each additional carbon copy so ordered: Provided, in all matters where the aforesaid fees for carbon copies do not exceed one dollar, a minimum charge of one dollar may be made for the same; and provided, further, in all trials or proceedings wherein costs are taxable, the fees aforesaid shall be taxed in the same manner as other costs. (Id. 1203, § 76.)

# NEVADA

## DISTRICT COURTS.

**Appointment—Term—Duties.** The judge or judges of any district court in the state may appoint a competent phonographic reporter, or as many such reporters as there are judges, to be known as official reporter or reporters of such court, and to hold office during the pleasure of the judge or judges appointing them. Such reporter, or any one of them, where there are two or more, must, at the request of either party, or of the court in a civil action or proceeding, and on the order of the court, the district attorney or the attorney for the defendant in a criminal action or proceeding, take down in shorthand all the testimony, the objections made, the rulings of the court, the exceptions taken, all arraignments, pleas and sentences of defendants in criminal cases, and all statements and remarks made and oral instructions given by the judge; and if directed by the court, or requested by either party, must, within such reasonable time after the trial of such case as the court may designate, write out the same, or such specific portions thereof as may be requested, in plain and legible longhand, or by typewriter, or other printing machine, and certify to the same as being correctly reported and transcribed, and when directed by the court file the same with the clerk of the court. (Rev. Laws, § 4908; Approved March 12, 1907.)

**Qualifications—Examination—Certification.** No person shall be appointed to the position of official reporter of any court in this state except upon satisfactory evidence of good moral character and without being first examined as to his competency by at least three members of the bar practicing in said court, such members to be designated by the judge or judges of said court. The committee of members of the bar so designated shall, upon the request of the judge or judges of said court, examine any person as to his qualifications whom said judge or judges may wish to appoint as official reporter; and no person shall be appointed to such position upon whose qualifications such committee shall not have reported favorably. The test of competency before such committee shall be as follows: The party examined must write in the presence of such committee at the rate of at least one hundred and fifty words per minute for five consecutive minutes, upon matter not previously written by or known to him, immediately read the same back to the committee, and transcribe the same into longhand writing, plainly and with accuracy. If he pass such test satisfactorily, the committee shall furnish him with a written certificate of that fact, signed by at least a majority of the members of the committee, which certificate shall be filed among the records of the court. (Id., § 4909.)

**Must Attend in Person, Except—Reporter Pro Tempore.** The official reporter of any district court shall attend to the duties of his office in person, except when excused for good and sufficient reason by order of the court, which order shall be entered upon the minutes of the court. Employment in his professional capacity elsewhere shall not be deemed a good and sufficient reason for such excuse. When the official reporter of any court has been excused in the manner provided in this section, the court may designate an official reporter pro tempore, who shall perform the same duties and receive the same compensation during the term of his employment as the official reporter. (Id., § 4910.)

**Oath.** The official reporter of any court, or official reporter pro tempore, shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office. (Id., § 4911.)



**Transcript Prima Facie Evidence.** The report of the official reporter, or official reporter pro tempore, of any court, duly appointed and sworn, when transcribed and certified as being a correct transcript of the testimony and proceedings in the case, is prima facie evidence of such testimony and proceedings. (Id., § 4912.)

**Transcript as Bill of Exceptions.** In all cases where an official reporter is appointed by the court, under authority of law, or by agreement of the parties, a transcription of the shorthand report of the proceedings in any action or special proceeding, when certified by said reporter to be a full, true and correct transcription of such proceedings, may, at the option of any party, be submitted to the court for allowance and settlement, as the bill of exceptions required under the provisions of this act, and the court or judge shall thereupon attach the certificate as herein provided, whereupon such bill of exceptions shall be and become a part of the record. (Stats. 1915, c. 142, § 5.)

**Compensation.** For his services the official reporter shall receive the following fees:

For reporting testimony and proceedings, ten dollars per day, which amount, when more than one case is reported in one day, must be apportioned by the court between the several cases.

For transcription, he shall receive ten cents per hundred words for the first copy, and five cents per hundred words for each additional copy.

In criminal cases the fees for reporting and for transcripts ordered by the court to be made must be paid out of the county treasury upon the order of the court; provided, that when there is no official reporter in attendance, and a reporter pro tempore is appointed, his reasonable expenses for traveling and detention must be fixed and allowed by the court and paid in like manner.

In civil cases the fees for reporting and for transcripts, ordered by the court to be made must be paid by the parties in equal proportions, and either party may, at his option, pay the whole thereof; and in either case, all amounts so paid by the party to whom the costs are awarded must be taxed as costs in the case. The fees for transcripts and copies ordered by the parties must be paid by the party ordering the same. No reporter must be required to perform any service in a civil case until his fees therefor have been paid to him or deposited with the clerk of the court. (Rev. Laws, § 4913.)

#### PRELIMINARY HEARINGS.

**Appointment—Duties—Compensation.** The magistrate, if he deems it necessary for the best interests of justice, and upon the approval of the district attorney, is authorized to employ a stenographer to take down all the testimony and the proceedings on said hearing or examination, and within such time as the court may designate have the same transcribed into longhand or typewritten transcript. The stenographer employed as aforesaid shall be sworn by the magistrate before whom such proceedings are held to take down in shorthand verbatim, truthfully and correctly such proceedings and testimony and to make a true and correct transcript of the same into longhand or typewritten transcript. When the testimony of each witness is all taken and transcribed, the same must be read over to the witness and corrected as may be desired, and then subscribed by the witness; or if he refuses to sign it, the fact of such refusal, and any reasons assigned therefor must be stated, and the same must be attested by the

magistrate. And such testimony so reduced to writing and authenticated according to the provisions of this section must be filed by the examining magistrate with the clerk of the district court of his county, and in case such prisoner is subsequently examined upon a writ of habeas corpus, such testimony must be considered as given before such judge or court. The testimony so taken may be used by either party on the trial of the cause, and in all proceedings therein, when the witness is sick, out of the state, dead, or when his personal attendance cannot be had in court. The compensation for the services of a stenographer employed as provided in this section shall be such an amount as shall be approved by the magistrate and district attorney, not exceeding eight dollars per day for reporting and twenty cents per folio for transcribing, to be paid out of the county treasury as other claims against the county are allowed and paid. (Id., § 6977.)

## NEW HAMPSHIRE

### SUPERIOR COURT—TRIAL TERMS.

**Appointment—Oath—Duties—Filing of Transcript.** The presiding justice of any trial term of the superior court shall, upon the request of either party to a cause, appoint an official stenographic reporter for such trial, who shall be sworn, and who shall make a true report of all the proceedings, and upon the request of either party the original stenographic notes and a duly certified transcript shall as soon as practicable be placed on file. (Pub. Laws, 1901, page 723, § 1.)

**Compensation—Taxation of Fees.** The Superior Court shall fix the compensation of said reporter at not less than five dollars nor more than ten dollars per day during the trial; and actual expenses of said reporter when away from home engaged in court work, and shall also fix a reasonable schedule of prices for copies furnished for the use of the court and parties. The parties shall pay for the copies furnished them at their request. The court shall order what, if any, part of the amount so paid by the prevailing parties shall be taxed in the bill of costs. (Id., § 2, as amended by Ch. 34, Laws of 1911.)

**Fees, How Paid.** The presiding justice shall order and allow the account of such reporter, and the same shall be paid by the county except for copies furnished parties. (Id., § 3.)

# NEW JERSEY

## PREROGATIVE COURT.

It shall be lawful for such Vice-Ordinary to employ a competent stenographic reporter, for the same purposes that vice-chancellors are authorized by law to employ such reporters, and such stenographic reporter shall be compensated in the same manner and after the same rates that such stenographers are compensated for services rendered to vice-chancellors. (2 Comp. Stat. p. 1724, § 90; P. L. 1900, p. 349.)

## CHANCELLOR'S COURTS.

**Appointment—Qualifications—Taxation of Fees.** Whenever the Chancellor shall take and hear the evidence of witnesses orally in any cause, it shall be lawful for him to employ a competent stenographic reporter to take down the evidence of such witnesses for the use of the court and of the parties, and to fix, allow and tax the fees of such reporter for writing out such evidence, and to apportion the same between the parties, and each party shall forthwith pay the part so apportioned, which shall be part of the taxable costs in the cause. (1 Comp. Stat., p. 449, § 109; P. L. (Revision) 1902, p. 545.)

**Compensation.** The stenographer so employed shall be paid for his services in attending before the Chancellor and taking down the evidence, ten dollars per diem, and the sum due such stenographer shall be paid by the State Treasurer, on the certificate of the Chancellor. (Id. § 110.)

## VICE-CHANCELLOR'S COURTS.

**Appointment—Qualifications—Taxation of Fees.** It shall be lawful for each Vice-Chancellor to employ a competent stenographic reporter to take down the evidence of such witnesses as may be examined before him for the use of the court, and the parties in the cause or matter; and to fix, allow and tax the fees of such reporter for writing out such evidence, and to apportion the same between the parties; and each party shall forthwith pay the part so apportioned to him, which shall be part of the taxable costs in the cause. (1 Comp. Stat. 447, § 98; P. L. 1902, p. 542.)

**Compensation.** The stenographer employed to report the proceedings in the Vice-Chancellors' Courts shall receive ten dollars a day for attending such courts, which shall be paid monthly by the State Treasurer on the certificate of the Vice-Chancellor. The Vice-Chancellor, with the approval of the Chancellor, may fix an annual salary for his stenographer in lieu of such per diems, and in such case a certificate stating the amount of the salary so fixed, signed by the Vice-Chancellor and Chancellor, shall be filed with the State Treasurer, who shall thereafter pay such salary monthly; this annual salary shall include payment for services to the Vice-Chancellor in the preparation of his opinion or conclusions and other official work, when deemed necessary; and for services in his official work other than attendance upon and reporting proceedings in his court, a Vice-Chancellor may employ other persons than a stenographer, paying for such services a salary, either monthly or annual, to be fixed and paid in like manner. (Id., § 103; Id., p. 543.)

Note: In some cases a salary of \$2,500 per annum has been fixed in lieu of per diem.

## ADVISORY MASTERS.

**Appointment—Qualifications—Duties—Taxation of Fees.** It shall be lawful for such master (advisory master), when any cause or matter is so

referred to him, to employ a competent stenographic reporter to take down the evidence of such witnesses as may be examined before him, for the use of the court and parties in such cause or matter, and to fix, allow and tax the fees of such reporter, for writing out such evidence, and to apportion the same between the parties; and each party shall forthwith pay the part so apportioned to him, which shall be part of the taxable costs in the cause. (Id., p. 449, § 106.)

**Compensation.** The stenographer employed to report the proceedings in causes before any advisory master shall be paid for his services in attending before said master and taking down the evidence, ten dollars per diem, and the sum due such stenographer shall be paid by the state treasurer monthly, on the certificate of the advisory master, approved by the chancellor. (Id., p. 449, § 108.)

#### SUPREME AND CIRCUIT COURTS.

**Appointment—Duties.** The justice of the supreme court holding the circuit court in any county, whenever in his discretion it shall seem proper, may appoint for his circuit a competent stenographic reporter whose duty it shall be to attend in person or by proxy, the sessions of the circuit court, court of oyer and terminer, court of quarter sessions, and court of special sessions, when requested by said justice or by the judge of such courts so to do, and exactly and truly take notes and record verbatim all the evidence and proceedings under the direction of said justice, or of the judge of the court in which such trial or proceedings may be had, except the arguments of counsel, and when requested so to do, to make and furnish true reports or transcripts thereof to said justice or judge and to each party in the cause. (2 Comp. Stat. p. 1721, § 72; Laws 1900, Ch. 149, § 53, p. 361.)

**Compensation.** The compensation of such reporter for attending said courts shall be fixed by the justice appointing him, and shall not exceed ten dollars per day; provided, that when such reporter shall furnish by request, a transcript of the evidence and other proceedings to a party in a cause, he shall be paid therefor by said party at a rate not to exceed ten cents for one hundred words; and for a transcript of the evidence and other proceedings furnished to the court by order of the court, said reporter shall be paid such sum as said justice shall fix, which sum shall be paid by the county collector upon the certificate of said justice. (Id., § 73; Id., § 54.)

The justice of the supreme court holding the circuit court of any county, after he shall have appointed for such circuit, a competent stenographic reporter, as authorized by law, may, in lieu of the per diem allowance now provided by the act to which this is a supplement, fix for such stenographic reporter an annual salary or compensation; and if there be more than one county circuit court within the judicial district of such justice, he shall fix said annual salary having relation to the several county circuit courts within his judicial district on such basis for each county circuit, as to him shall seem reasonable and just, considering the business of the several county courts within his judicial district; and upon his filing a certificate with the collector of any county within his judicial district reciting the amount of the salary so apportioned to such county, and a duplicate of such certificate with the state comptroller, said collector shall pay to such stenographic reporter, in equal monthly installments, such annual salary so fixed and apportioned to said county, and one-third of the sum so paid shall be refunded to said county by the state treasurer upon the warrant of said comptroller. (Id., p. 1722, § 73a; Laws 1901, Chap. 81, p. 182.)

Note: In some cases a salary of \$2,500 per annum has been fixed in lieu of per diem.

**Oath.** Said reporter shall be duly sworn in open court, faithfully to perform all the duties imposed upon him by law, and the justice holding said circuit may at any time remove any such reporter and appoint another reporter in his place. (Id., § 74; Laws 1900, Chap. 149, § 55, p. 362.)

**Writs of Certiorari—Stenographer.** In all cases of writs of certiorari hereafter allowed where the evidence given at the trial or proceeding under review shall have been reported stenographically by a competent stenographer designated by the court, official, tribunal, board or governing body before whom such trial or proceeding shall be had, the official or court making return to said writ shall, when requested so to do by the prosecutor or respondent in said writ, and upon being provided with a transcript of such evidence, at least five days prior to the return day of said writ, which said transcript shall be duly certified by said stenographer, certify and send to the reviewing court as the evidence given at said trial or proceeding and as a part of the return to said writ, said transcript of said evidence, and said evidence shall constitute a part of the state of the case and be considered by the reviewing court upon the argument of said writ as the evidence given at said trial or proceeding; provided, however, that this act shall not operate to prevent either party from taking additional proofs in the manner now or hereafter provided by law; and provided, further, that this act shall not apply to District Courts. (P. L. 1914, Chap. 208, p. 419.)

#### CRIMINAL COURTS.

**Attendance of Circuit Court Stenographer.** It shall be lawful for the judge of the court of Quarter Sessions in any county, when in his judgment the administration of justice will be facilitated thereby, to designate the stenographer of the circuit court to attend, either in person or by proxy, in the court of quarter sessions, and in the court of special sessions of such county, or in any county of the first class said judge may appoint any competent stenographer, for which service the stenographer shall be entitled to receive such compensation as shall be fixed by said judge, not to exceed fifteen hundred dollars per annum. (2 Comp. Stat. 1868, § 146; P. L. 1898, p. 917.)

**Appointment—Duties.** The presiding judge of the court of oyer and terminer, or the judge of the court of quarter sessions, or court of special sessions, in and for the several counties of this state, shall, upon request of the prosecutor of the pleas, or attorney of any defendant in any indictment in the said oyer and terminer or quarter sessions, or accusation of crime in the court of special sessions, call upon the stenographer of the circuit court to attend either in person or by proxy, upon any such trial in said court of oyer and terminer, quarter sessions or special sessions, and exactly and truly take notes and record verbatim all the evidence and proceedings of such trials, except the arguments of counsel, and, when requested, to make and furnish true reports thereof to the judge, and to each party in said cause; provided such request be made to said judge and filed with the clerk of such court at least one day previous to the day fixed for the trial. (Id., § 147; Laws 1898, Chap. 237, § 147, p. 917.)

**Compensation.** The compensation of such stenographer shall not exceed ten dollars per day, which sum shall be deposited by the defendant with the clerk of said courts, at the time of filing his request for a stenographer, and in the event of the conviction of such defendant said sum shall be paid by the clerk to the stenographer; but upon the acquittal of said defendant, said sum shall be returned by the clerk to said defendant, and in such case the compensation of such stenographer shall be paid by the county collector, upon the certificate of the trial judge. (Id., § 148; Id., Chap. 237, § 148.)

## COMMON PLEAS COURTS.

**Appointment—Duties.** The judge of the court of common pleas shall upon the request of an attorney at law employed in any suit originally begun in said court, call upon the stenographer of the circuit court to attend either in person or by proxy upon any such trial in said court, and exactly and truly take notes and record verbatim the evidence and proceedings of such trial, except the arguments of counsel, and when requested, to make and furnish true reports thereof to the judge and to each party in said cause; provided such request be made to said judge and filed with the clerk of such court at least one day previous to the day fixed for the trial. (2 Comp. Stat., p. 1728, § 103; P. L. 1900, p. 335.)

**Compensation—Oath.** The compensation of said stenographer shall not exceed ten dollars per day, which sum in cases originally commenced in said court shall be paid by the board of chosen freeholders of the county wherein he is employed, upon the certificate of said judge, and such stenographer shall, before he enters upon his duties, be sworn in open court faithfully and honestly to perform the duties so imposed upon him; no compensation shall be paid to such stenographer except when actually engaged in the trial of a cause. (Id.; Id.)

## ORPHANS' COURTS.

**Appointment.** When any cause or matter shall be so referred to a master, it shall be lawful for him to take and hear the evidence of any or all witnesses in said cause or matter orally in the same manner as the evidence is now taken and heard in courts of law of this state or trials before a jury. And it shall be lawful for such master, when any cause or matter is so referred to him, to employ a competent stenographic reporter to take down the evidence of such witnesses as may be examined before him, for the use of the court and parties in such cause or matter. (Comp. Stat. Vol. 3, p. 3809 (Rev. of 1898) § 9b.)

**Compensation.** The Orphans' Court shall fix the compensation to be paid to such masters and stenographers for their services, which said compensation shall be paid by the County Collector, on the certificate of the said Orphans' Court. (Comp. Stat., Vol. 3, p. 3816; P. L. 1898, p. 717, as amended by P. L. 1907, p. 293.)

**Examinations Before Surrogate.** All examinations to be taken and made use of at the hearing of any cause in the Orphans' Court of any such county may be taken and reduced to writing before the surrogate of such county, or a master in chancery, . . . and either of the parties may, either in person or by his attorney, be present and examine and cross-examine such witnesses, and the examination so taken shall be of the like force and effect as if taken in the Orphans' Court, and shall be filed with the Clerk of said court and read in evidence upon the hearing of said cause, saving all just exceptions. (Id. p. 3884; P. L. 1898, p. 784.)

**Compensation Before Surrogate.** The surrogate and other officers of the Orphans' Court shall receive, for the services hereinafter mentioned, the fees thereunto annexed, and no more; and a sheet or folio shall contain one hundred words . . . Taking the examination of every witness, for each sheet, twenty cents. (Id. 3885; P. L. 1898, p. 789.)

**Note:** Since the passage of this act surrogates have been put on a salary basis; by custom, however, a stenographer before a surrogate or in the orphans' court receives \$10 per diem and ten cents per folio.

## DISTRICT COURTS.

**Appointment—Transcripts.** Whenever either party to any cause in any district court, in this state, makes application to the judge thereof for the appointment of a stenographer to transcribe the proceedings at the trial of the said cause and take down the testimony therein, it shall be the duty of the said judge to designate a stenographer to act as aforesaid in said case, at the expense of the party so applying, which stenographer shall be duly sworn; and if an appeal shall be taken from, or a writ of certiorari allowed upon the judgment in said cause, the transcript of said proceedings and said testimony, made by said stenographer, shall be certified by said judge as the state of the case, to be used on the hearing of said appeal or certiorari, and shall be transmitted by the party so appealing or suing out said writ of certiorari to the Clerk of the Supreme Court within fifteen days from the rendition of the judgment. (2 Comp. Stat., p. 1957, § 13b; P. L. 1905, p. 259—P. L. 1912, p. 318.)

## DEPOSITIONS.

**May Be Taken in Shorthand.** In all cases where the testimony of a witness *de bene esse* is taken upon notice it shall be lawful for the same to be taken stenographically, provided the stenographer be first sworn by the judge, commissioner or other officer designated to take such testimony, which oath shall be in writing, and shall be attached to and be made a part of the return of the judge, commissioner or other officer named for taking such testimony. (2 Comp. Stat. 2235, § 48; Laws 1903, Chap. 135, p. 219.)

See also *Id.* 2237, § 57.

## PROCEEDINGS BEFORE BOARDS, ETC.

**Appointment—Oath—Compensation.** In all trials or proceedings hereafter had before any court, official, tribunal, board or governing body of this state, where not now otherwise provided by law, such court, official, tribunal, board or governing body shall upon request of either party to such trial or proceeding, at the expense of the party so requesting, designate a competent stenographer reporter, who shall be duly sworn, to report verbatim any such trial or proceeding, excepting the arguments of respective counsel. Said stenographer shall, upon request, transcribe into type-writing the record of such trial or proceeding upon payment to him therefor at the rate of ten cents per folio of one hundred words. (P. L. 1914, Chap. 145, p. 256.)

## GRAND JURY, STENOGRAPHER TO CLERK OF

In any county of the first and second class in this state the justice of the Supreme Court holding the circuit of such county may designate some person who is a competent stenographer and who is regularly employed in the office of the prosecutor of the pleas of such county, at a stated salary, to act as assistant to the clerk of the grand jury of such county, in addition to his regular duties in said office; and it shall be lawful, when requested by the grand jury, for the person so designated to attend the sessions of the grand jury, and take the minutes of the evidence there adduced; provided, the person so designated shall not be entitled to any extra compensation for his services as assistant to the clerk of the grand jury. (P. L. 1912, p. 910.)

See 2 Comp. Stat. p. 1869, § 1480.

## COURT OF CHANCERY RULES.

**Stenographer's Fees.** Where testimony is taken before an examiner by means of a stenographer, the fees taxed to the examiner therefor shall be divided between him and the stenographer as follows: (One-third to the examiner and two-thirds to the stenographer:) (And where testimony shall have been taken before a vice-chancellor, or an advisory master, by means of a stenographer, no examiner's fees shall be taxed in the bill of costs.) § 110.

**Examination to Proceed as Rapidly as Possible.** When a stenographer, appointed by the vice chancellor, shall attend to take down the testimony, the examination shall proceed as rapidly as counsel can ask, and the witness answer, the questions. The examining counsel shall not take notes, nor shall the examination be delayed in order that any counsel or other person, except the reporter, may take minutes of the testimony. But every effort shall be made by the court and counsel to expedite the cause, so far as may be consistent with a full and fair hearing thereof. § 197.

## NEW MEXICO

## DISTRICT COURT.

**Appointment — Oath — Compensation — Filing of Notes — Transcripts.** When in the opinion of the judge of the district court, the services of a stenographer are necessary, he may appoint one, who shall take oath. Such stenographer shall receive seven dollars a day, to be paid out of the court fund for his attendance upon said court for such services as he may be required by the court to perform at and during the term of said court, and for any services he may be required by the court to perform in the trial of cases before court in chambers, provided that he shall not receive over \$150.00 a year for services in chambers. The notes of the official stenographer shall at the end of the term of court be deposited in the office of the clerk of the court. Transcripts shall be furnished to any party at a charge not exceeding fifteen cents per folio. (Stats., 1915, §§ 1379, 1380.)

**Residence.** No stenographer shall be eligible to be appointed unless such person shall have been a bona fide resident of the state for two years prior to the date of such appointment. (Stats., 1915, § 3950; Laws 1909, c. 127.)

**Making up Bills of Exceptions—Filing Transcripts.** In all cases tried by the court, either with or without the intervention of a jury, the testimony, all rulings of the court, objections made and exceptions taken on the trial shall be taken down by the court stenographer. After such trial any party to the action may require the court stenographer to transcribe the whole or any part of his stenographic notes, and when the stenographer shall have transcribed his notes he shall file the same in the office of the clerk of the court in which the action in which they were taken was tried. After notice (as herein provided) unless said transcript or other matters tendered shall be shown to be incorrect, and in that case after its correction, the judge or his successors, shall settle, sign and deliver the said transcript as a bill



of exceptions, adding thereto such additional matter properly sought to be added. For the purpose of having said bill of exceptions signed and sealed, it shall not be necessary to make out a new copy of the notes of said stenographer or other matters tendered, but the same may be referred to and identified as a part of the bill of exceptions; nor shall it be necessary to serve a copy thereof with the notice. (Stats., 1915, § 4495.)

**Compensation for Other than Term Time.** The stenographer shall be compensated for taking down testimony (except testimony taken in term time, where the court stenographer acts) at the rate of seven dollars per day, and shall be allowed for transcribing the same ten cents per folio for the original copy, and three cents per folio for each additional copy. (Stats., 1915, § 4496.)

**When Stenographer's Notes not Available.** When for any reason a transcript of the stenographer's notes taken upon the trial of any cause cannot be obtained, a statement of the facts of the case may be prepared and submitted to the court together with the rulings of the court on the admission or rejection of evidence, when excepted to, and the same shall be settled and signed by the court below in the same manner as bills of exceptions were formerly settled when no stenographer was used. (Stats., 1915, § 4497.)

**Compensation for Transcripts on Appeal.** Where a printed record is required in the Supreme Court, the clerk of said court shall tax ten cents per folio of one hundred words for the original transcript of the stenographer's notes, and three cents for one additional copy thereof, which sums are hereby fixed as the compensation of stenographers for preparing transcript and copies thereof. (Laws 1907, Ch. 57, § 34, p. 133, as amended by § 3, C. 120 Laws 1909, p. 338, and Laws 1915, C. 77.)

**Filing Extra Copies—Compensation—Payment in Advance.** The stenographer when transcribing his notes shall make as many copies as are demanded, and shall certify and file them with the clerk of the court in the same manner as the original. The court may, by rule, where not otherwise fixed by statute, fix the compensation of stenographers for such extra copies so filed with the clerk, which shall be paid for in advance if demanded, by the parties ordering the same, and the amount so paid for the original and one copy of such transcript by the party ordering the same shall be taxed as costs. (Stats., 1915, § 4255.)

**Mileage.** Stenographers and interpreters employed in the several district courts of the territory shall hereafter be allowed ten cents per mile for each mile actually and necessarily traveled in going to and returning from the several courts in their respective districts, payable out of the court fund. (Stats., 1915, § 1409.)

#### GRAND JURIES.

**Appointment—Duties—Compensation.** The several district judges of this territory shall be authorized to employ and appoint a competent person to reduce to writing upon a typewriting machine testimony given before grand juries, stenographer to take down the same in shorthand, any person so employed and appointed shall be sworn in open court to accurately report such testimony and to keep secret all proceedings of the grand jury occurring in his or her presence, or in any way coming to his or her knowledge, by virtue of such position, and may immediately upon the completion of the writing or transcribing of the said stenographic notes of the testimony in each case deliver the transcript thereof to the foreman of the grand jury, who shall require the witness giving such testimony to subscribe his name

thereto. Persons employed in the aforesaid capacity shall receive as compensation not to exceed five dollars per day to be paid out of the court fund by order of the court. It shall be the duty of the foreman of the grand jury, upon completion of the investigation in any case, to deliver all such testimony to the district attorney. (Stats., 1915, § 3123.)

#### PRELIMINARY EXAMINATIONS.

**Appointment—Duties.** In all preliminary examinations before justices of the peace of the crimes of murder or other felonies, whenever, in the judgment of the district attorney, it is advisable to perpetuate the testimony in order to submit it to the grand jury, the district attorney is authorized to employ a stenographer to take down the evidence and transcribe it, and the district attorney may present such evidence to the grand jury after it has been transcribed and certified to. (Stats., 1915, § 3261.)

**Compensation.** For such services the stenographer shall receive the same allowance as is provided for like services in the district court. (Comp. Laws, 1897, § 3380.)

**How Paid.** Justices of the peace shall certify the number of days the stenographer is employed in taking down the testimony, which certificate shall be endorsed by the district attorney, and presented to the board of county commissioners, and audited and paid out of the county funds. (Stats., 1915, § 3262.)

#### SENATE AND HOUSE OF REPRESENTATIVES.

Provision is made for the employment by the State Legislature of six stenographers of the Senate at the rate of six dollars per diem; and of eight stenographers of the House of Representatives at the same per diem. (Laws of 1912, C. 2, § 2.)

#### COMMISSIONS.

Provision is made for the employment of a stenographer by the State Corporate Commission, who shall take and transcribe the evidence taken before the commission, in triplicate. (Ch. 78, § 12, Laws of 1912.) Documentary evidence may be filed before said commission, or whenever practicable, such matter may be read and taken down by the stenographer and thus made a part of the record. (Id., § 8.)

It is provided by the rules of the Board of Water Commissioners that when either party desires to have testimony of witnesses transcribed, he shall deposit with the clerk sufficient funds to pay for same at the rates charged for transcribing testimony in cases in district courts of New Mexico. (Rule VI, § 2.)

## NEW YORK

### CERTIFIED SHORTHAND REPORTER.\*

**Defined.** A certified shorthand reporter is one who has been adjudged competent to report court proceedings, references, commissions, conventions, deliberative assemblies or meetings of like character. (Cons. L., General Bus. L. 1909, Art. 8A, § 85; and Laws 1913, Ch. 249.)

**Qualifications.** Any citizen of the United States, or person who has duly declared his intention of becoming such citizen, residing or having a place for the regular transaction of business in this state, being over the age of twenty-one years, and of good moral character, and who shall have received from the regents of the university a certificate of his qualifications to practice as a public shorthand reporter as hereinafter provided, shall be styled and known as a certified shorthand reporter\* and no other person shall assume such title or use the abbreviation C. S. R., or any other words, letters or figures to indicate that the person using the same is such certified shorthand reporter. (Id., § 86.)

**Examination and Certification—Revocation.** The regents of the university shall appoint a board of three examiners, which board shall after the year nineteen hundred and fourteen be composed of certified shorthand reporters. The term of office of the members of such board of examiners shall be three years, except that of the first board appointed under this article, one member shall hold office for one year, one member for two years, and one member for three years, such respective terms to be determined by the regents of the university, who shall also fill any vacancies which may occur in such board. Said board of examiners shall, subject to the approval of the regents, make such rules and regulations, not inconsistent with the law, as may be necessary for the proper performance of its duties. Any member of the board may, upon being duly designated by the board or a majority thereof, administer oaths or take testimony concerning any matter within the jurisdiction of the board. The regents shall charge for examination and certificates such fee as may be necessary to meet the actual expenses of such examinations, and they shall report annually their receipts and expenses under the provisions of this article to the state comptroller, and pay the balance of the receipts over expenditures to the state treasurer. The regents may revoke any such certificate for sufficient cause after written notice to the holder thereof, and a hearing thereon. (Id., § 87.)

**Violations.** Any violation of the provisions of this article shall be a misdemeanor. (Id., § 89-a.)

### CIVIL SERVICE.

Note: The stenographers in all courts of this state come under the Civil Service Law, rules and regulations being made by the Civil Service Commission.

**Competitive Class.** The competitive class shall include all positions for which it is practicable to determine the merit and fitness of applicants by competitive examination, and shall include all positions now existing, or hereafter created, of whatever functions, designations or compensation, in each and every branch of the classified service, except such positions as are in the exempt class, the non-competitive class or the labor class. Appointments shall be made to or employment shall be given in all positions

\*Note: Original act says "Certified Shorthand Reported."

in the competitive class that are not filled by promotion, reinstatement, transfer or reduction under the provisions of this chapter, and the rules in pursuance thereof, by appointment from among those graded highest in open competitive examinations conducted by the state or municipal commission, except as herein otherwise provided. The term of eligibility shall be fixed for each eligible list at not less than one nor more than four years. Appointment shall be made from the eligible list most nearly appropriate for the group in which the position to be filled is classified, and a new list shall be created for a stated position or group of positions only when there is no appropriate list existing from which appointment may be made. No person shall be appointed or employed under any title not appropriate to the duties to be performed, and no person shall be transferred to, or assigned to perform the duties of, any position subject to competitive examination, unless he shall have previously passed an open competitive examination equivalent to that required for such position, or unless he shall have served with fidelity for at least three years in a similar position. Appointments to positions in the state service, the duties of which are confined to a locality outside of Albany county, shall, so far as practicable, be made from residents of the judicial district or districts including such locality. The examinations shall be public and shall be practical in their character and shall relate to those matters which will fairly test the relative capacity and fitness of the persons examined to discharge the duties of that service into which they seek to be appointed. Such commissions shall prepare lists of preliminary requirements and subjects of examination for the several positions or groups of positions in the competitive class and shall publish their rules and such information, and advertise such examinations in such manner as the nature of the examinations may require. Each of such commissions shall require intending competitors to file in its office a reasonable length of time before the date of any examination, a formal application in which the applicant shall state under oath:

1. His full name, residence and postoffice address.
2. His age and the place and date of his birth.
3. His health and physical capacity for the public service.
4. His right of preference by reason of military or naval service.
5. His business or employment, and residence for at least the previous five years.

(Cons. L., Civil Service Law, 1909, § 14.)

#### SUPREME COURT—APPELLATE DIVISION.

**Appointment.** The justices of the appellate division of the supreme court in the first department, or a majority of them, must appoint, and may at pleasure remove, a stenographer for each part or term of the supreme court; and three stenographers, either male or female, for the appellate division of the first department. Each justice of the appellate division in each of the third and fourth departments shall have power to employ the services of a stenographer or a confidential clerk. (Cons. L., Judiciary L.,

**Duties.** Each stenographer appointed by the justices of the appellate division of the first department for each part or term of the supreme court and for the appellate division in said department pursuant to § 109 of this chapter must attend the sittings of the term or part to which he or she is assigned, or the sitting of such other term or part of said court as shall be directed by the presiding justice of the appellate division. (Id., § 306.)

**Compensation.** The stenographers appointed by the justices of the appellate division of the first department for each part or term of the supreme court and for the appellant division pursuant to § 109 of this chapter shall receive an annual salary of three thousand six hundred dollars, payable in equal monthly installments. The compensation of each stenographer or confidential clerk appointed by the justices of the appellate division of the third and fourth departments, shall not exceed eighteen hundred dollars a year, to be paid by the comptroller of the state upon the certificate of the justice by whom he is employed. (Id., § 307, as amended by L. 1911, ch. 543, L. 1912, ch. 173, L. 1913, ch. 491.)

**Typewriter Operators—Appointment.** The justices of the appellate division of the supreme court in the first department, or a majority of them, must appoint, and may at pleasure remove, one typewriter, either male or female, for the appellate division of the first department. The justices of the appellate division of the supreme court in the second judicial department, or a majority of them, may appoint, and at pleasure remove, two typewriter operators. (Cons. L., Judiciary L., 1909, § 110.)

**Same—Compensation.** The salary of each of said typewriter operators so appointed in the first and second judicial departments shall be fixed by said justices in their discretion, not to exceed \$2,400 per annum. In the first department such salary shall be paid by the city of New York, and in the second department by the comptroller of state. (Id., § 308, as amended by L. 1913, ch. 387.)

#### SUPREME COURT.

**Appointment.** 1. In addition to the stenographers appointed under special laws, the justices of the supreme court, or a majority of them, for each judicial district, excepting the first, second, third, fifth, seventh, eighth and ninth, shall appoint, and may at pleasure remove, three stenographers.

2. The justices of the supreme court, residing in the county of Kings, or a majority of them, may appoint and may at pleasure remove sixteen stenographers.

3. Each justice of the supreme court for the second judicial district, who does not reside in the county of Kings, may appoint, and may at pleasure remove, a stenographer, and such justices, or a majority of them, may also appoint, and at pleasure remove, two additional stenographers.

3-a. The justices of the supreme court residing in the county of Kings, or a majority of them, may appoint and at pleasure remove, a typewriter operator for the purpose of copying their minutes, and doing any other confidential work which may be required by said justices or the clerk of the court. The salary or compensation to be paid to such typewriter operator shall be fixed by said justices, and the expense thereof shall be raised with the annual tax levy as a county charge.

4. The justices of the supreme court, or a majority of them, for the third judicial district, shall appoint, and may at pleasure remove, four stenographers of the supreme court for such district.

5. Each of the justices of the supreme court assigned to hold special terms in the third and fourth judicial districts for the hearing of contested motions, and the trial of issues of fact and law, may appoint and at pleasure remove a stenographer.

6. The justices of the supreme court, or a majority of them, for the fifth and seventh judicial districts, respectively, shall appoint, and may at pleasure remove, five stenographers of the supreme court for each of such districts.

7. The justices of the supreme court for the eighth judicial district may appoint, and may at pleasure remove, ten stenographers of the supreme court for such district.

8. Each justice of the supreme court for the ninth judicial district may appoint, and may at pleasure remove, a stenographer. (Cons. L., Judiciary L., 1909, § 161, as amended by L. 1909, chs. 202, 401, and L. 1910, ch. 60.)

**Attendance.** 1. The stenographers appointed pursuant to § 161 of this chapter, by the justices of the supreme court, residing in the county of Kings, shall severally attend, as directed by the respective justices appointing them, the terms of the appellate division and trial and special terms of the supreme court, in the county of Kings.

2. Each of the stenographers appointed pursuant to said § 161, by the justices of the supreme court, for the second judicial district, who do not reside in the county of Kings, must attend as directed by the justice appointing him the trial and special terms of the supreme court, held in the counties of Suffolk, Queens, Nassau and Richmond, or either of them, and when not thus officially engaged, the stated terms of the county court, in each of those counties.

3. Each of the stenographers appointed pursuant to said § 161 by the justices of the supreme court, for the ninth judicial district must attend, as directed by the justice appointing him, the trial and special terms of the supreme court held in the counties of Westchester, Putnam, Dutchess, Orange and Rockland, or either of them, and when not thus officially engaged, the stated terms of the county court in each of those counties.

4. Each of the stenographers appointed pursuant to said § 161, by the justices of the supreme court for each judicial district except the first, second and ninth shall attend such special and trial terms of the supreme court in his judicial district as he shall be assigned to attend by the justices of the supreme court, or a majority of them, for such district. (Cons. L., Judiciary L., 1909, § 309.)

**Duties—Third and Fourth Districts.** The stenographer to each of the justices of the supreme court in the third and fourth judicial districts, appointed pursuant to § 161 of this chapter, must attend and perform all such services, as may be required of him in reporting, writing out, copying and otherwise assisting in all judicial proceedings before the justice appointing him, and also in transmitting papers to the county clerk's office in said district for filing and entry therein. (Id., § 311.)

**Duties—Eighth District.** The stenographers of the supreme court in the eighth judicial district appointed pursuant to § 161 of this chapter shall report and transcribe opinions for the justices of the supreme court, when required, without additional compensation, and shall, within twenty days after notice by an attorney or party that he intends to appeal make a case and exceptions or bill of exceptions in a criminal or civil action, or that briefs are to be made or arguments prepared in an action tried before the court without a jury, file with the clerk of the county in which the venue of such action is laid, a transcript of the minutes taken by him on such trial together with such notes attached thereto. The stenographer shall be entitled to the amount provided by § 3311 of the Code of Civ. Pro. as the same is now or may hereafter be amended, for each folio of transcript so filed, and such amount shall be paid by the treasurer of the county wherein the venue of such action is laid, upon the order of the justice presiding at such trial. The attorney giving such notice and the party shall be jointly and severally liable for the amount so paid by the county treasurer for such transcript, unless within six months after the filing of

such transcript such attorney or party shall file with the clerk of the county in which the venue of such action is laid proof by affidavit that an appeal has been taken in good faith with the intent to prosecute the same, a case and exceptions or bill of exceptions in a civil or criminal action has been made and filed or briefs or arguments have been prepared and made in an action tried before the court without a jury. If such affidavit is not filed as aforesaid, the party or his attorney giving such notice shall pay to the county treasurer on demand, the amount paid by the said treasurer to the stenographer for such transcript and the treasurer may recover said amount in his name of office, in any action in any court of competent jurisdiction against said attorney and party. (Id., § 310.)

**Salary—Second District.** 1. The stenographers appointed pursuant to § 161 of this chapter, by the justices of the supreme court residing in the county of Kings, shall receive an annual salary to be fixed by said justices, and the expense thereof shall be raised with the annual tax levy as a county charge.

2. Each stenographer appointed as prescribed in § 161 of this chapter, by the justices of the supreme court for the second judicial district who do not reside in the county of Kings, shall receive an annual salary to be fixed by such justices not exceeding three thousand six hundred dollars. To make up and pay the salaries specified in this subdivision, the board of supervisors of each of the counties in said district must annually levy, and cause to be collected, as a county charge, a proportionate part of the sum necessary to pay the same, to be fixed by the comptroller of the state, in accordance with the amount of the taxable real and personal property in each county, as shown by the last annual assessment roll therein. The treasurer of each county must pay over the sum so raised, to the comptroller of the state, who must thereupon pay the salary of each stenographer, in equal quarterly payments, under the direction of the justice making the appointment. (Cons. L., Judiciary L., 1909, § 316, as amended by L. 1910, ch. 180, L. 1913, ch. 491, and L. 1913, ch. 599.)

**Salary—Except First and Second Districts.** Each of the stenographers appointed by the justices of the supreme court pursuant to subdivisions one, four, six, seven and eight of § 161 of this chapter shall receive an annual salary of three thousand six hundred dollars, to be paid by the comptroller of the state in equal quarterly payments, upon the certificate of a justice of the supreme court of the judicial district for which he shall have been appointed. To provide the means to pay such salary, the comptroller of the state shall, on or before the first day of November in each year, fix and transmit to the clerk of the board of supervisors in each of the counties in said district a statement of the sum to be raised by such board of supervisors, in accordance with the amount of taxable real and personal property in each of said counties as shown by the last annual assessment roll therein. The boards of supervisors in each of such counties shall annually levy and cause to be collected in such county and to be paid over to county treasurer thereof, the sums fixed by the comptroller to be raised by such board of supervisors, and such county treasurer shall pay such sum to the comptroller of the state for the payment of said salaries. (Cons. L., Judiciary L., 1909, § 313, as amended by L. 1910, ch. 180, and L. 1913, ch. 491.)

**Expenses—Except First and Second Districts.** Each of the stenographers specified in the last section is also entitled to payment of his actual and necessary expenses, while attending court, including stationery, and ten cents for each mile for his actual travel, between the place of holding each

term and his residence, going and returning, or from term to term, as the case may be. The amount thereof must be paid upon the certificate of the judge holding or presiding at the term by the treasurer of the county where the term is held, from the court fund, or the fund from which jurors are paid. But mileage shall not be computed beyond the bounds of the judicial district, except where the usual line of travel, from one point to another within that district, passes partly through another judicial district. (Id., § 314, as amended by L. 1910, ch. 180.)

**Same—To be Certified by Justice Holding Term.** The amount to which the stenographers of the supreme court are entitled for expenses, as prescribed in § 314 of this chapter, must be certified by the judge holding or presiding at the term. (Id., § 164, as amended by L. 1909, ch. 240.)

**Salary—Third and Fourth Districts—Special Terms.** Each stenographer appointed pursuant to subdivision five of § 161 of this chapter, by the justices of the supreme court assigned to hold special terms in the third and fourth judicial districts, shall receive a salary, fixed by said justices, not exceeding eighteen hundred dollars per annum and also a reasonable sum for actual necessary expenses while traveling to and from said terms, and while attending court, including stationery, and the same shall be paid by the comptroller in equal quarterly payments, upon the certificate of said justices. The comptroller shall annually on the first day of November fix and transmit to the clerk of each board of supervisors in each of said districts a statement of the sum to be raised by the board of supervisors of each of the counties within such district, in accordance with the amount of taxable real and personal property in each of said counties, as shown by the last assessment roll therein. Said board of supervisors must annually levy and cause to be collected, as a county charge, and paid over to the several county treasurers the several sums fixed by the comptroller and such county treasurers shall pay over the sum so collected to the comptroller of the state for the payment of such salaries and expenses. (Id., § 317, as amended by L. 1911, ch. 543.)

**Same—Certificate of Justices to Comptroller.** Each of the justices of the supreme court assigned to hold special terms in the third and fourth judicial districts appointing a stenographer pursuant to subdivision five of § 161 of this chapter shall annually on the first day of October fix and transmit to the comptroller the amount allowed to such stenographer for salary and expenses as provided by § 317 of this chapter. (Id., § 165, as amended by L. 1909, ch. 240.)

**Assistant in Kings County—Compensation—How Paid.** A stenographer, appointed as prescribed in subdivision two of § 161 of this chapter by the justices of the supreme court residing in the county of Kings, may, with the consent of the judge holding or presiding at a special or trial term of the supreme court, employ an assistant stenographer to aid him in the discharge of his duties at that term, whose compensation must be paid by the stenographer and shall not become a county charge. (Id., § 312.)

**Temporary Stenographer where Official Fails to Attend.** If an official stenographer shall not be in attendance at a trial term of the supreme court, or a special term of the supreme court where issues of fact are triable, the justice presiding at the term may, in his discretion, employ a stenographer, who shall be paid such compensation as the justice shall by his certificate fix, not to exceed ten dollars for each day's attendance, and ten cents for each mile for travel to and from his residence to the place where the term is held, together with a reasonable sum for his necessary expenses and stationery. The sum so fixed shall be a charge upon the county in which the



term shall be held, and shall be paid by the county treasurer upon such certificate from the court fund or the fund from which jurors are paid. (Id., § 162.)

**Same—When Compensation for Deducted from Official's Salary.** If the official stenographer of the judicial district in which such term shall be held shall have been duly assigned to attend such term, and it does not appear to the satisfaction of the justice that the failure to attend was excusable, the justice may cause an order of the court to be entered at such term, that the portion of the sum so paid by the county treasurer, which was allowed for the per diem compensation for the services of the stenographer employed at such term, shall be deducted from the salary of the official stenographer who shall have been so assigned to attend such term, and the clerk of such county shall transmit to the comptroller a certified copy of such order, and the comptroller shall deduct such amount from the salary of such official stenographer and pay the same to the treasurer of said county. (Id., § 163.)

**Retirement on Pension.** The appellate division of the supreme court of the third or fourth departments may, in its discretion, retire any stenographer of the supreme court in a judicial district in such department, who shall have become physically or mentally incapacitated for the further performance of the duties of his office, provided he shall have served as such in any court of the state for a period of at least twenty-five years, and for fifteen years immediately preceding such disability, in the supreme court. ¶ A person retired from service pursuant to this section shall be paid an annual sum or annuity to be determined by the appellate division, not exceeding one-half of the average amount of his annual salary for a period of two years preceding his retirement. Such annuity shall be paid in equal monthly installments during the lifetime of the person retired. No present employee shall be so retired unless within ninety days after this section takes effect he shall have signified his intention to the appellate division that he desires to take advantage of this section. All employees appointed after this section takes effect shall immediately become entitled to the benefits herein conferred, subject to the salary deductions hereinafter provided. The comptroller shall at the end of each full calendar month thereafter deduct and retain monthly from the salary of any such persons one per centum of his monthly salary. Money so deducted from the salary of stenographers of the supreme court in a department or judicial district shall be kept in a separate fund and credited to the department or district. A person retired pursuant to this section shall be paid by the state comptroller out of the funds credited to the retirement fund from the department or judicial district in which such person shall reside, or if the amount thereof be insufficient, the balance shall be paid in the first instance by the state out of money appropriated therefor and be apportioned by the comptroller among the counties of the department or judicial district in which such person shall reside, in proportion to the taxable property of such counties respectively, according to the last assessment roll thereof. The amount so apportioned to each county shall be a county charge and the county treasurer upon receipt thereof shall pay over the same to the comptroller of the state. (Laws of 1914, Chap. 511.)

Note: A similar act with reference to the second department was passed in 1915, C. 557 Laws.

**Fees for Transcripts.** Except where otherwise agreed, or when special provision is otherwise made by statute, a stenographer is entitled, for a copy fully written out from his stenographic notes of the testimony, or any

other proceeding, taken in an action, or a special proceeding in a court of record, or before a judge or justice thereof, and furnished, upon request, to a party or his attorney, to the following fees for each folio. In a trial term of the supreme court, or at a special term of the supreme court in the third, fourth, fifth, sixth, seventh or eighth judicial districts, six cents; in any other court or courts, ten cents; and for the copy of the testimony required to be made in any proceeding for the record of the surrogate's court of the counties of New York, Bronx and Kings, ten cents; and the surrogate may order that the fees for such record copy be paid out of the estate to which the proceeding relates. (Code of Civ. Pro., 1910, § 3311, as amended by Ch. 198, Laws of 1915.)

**Transcripts in Criminal Cases—How Payable.** Where the defendant is convicted of a crime punishable by death, the stenographer, within ten days after the judgment has been pronounced, shall furnish to the attorney for the defendant, at his request, a copy of the stenographic minutes of the entire proceedings upon the trial. Where the defendant is convicted of a crime not punishable by death the clerk of the court in which the conviction was had shall within two days after a notice of appeal shall be served upon him notify the stenographer that an appeal has been taken, whereupon the stenographer shall, within ten days after receiving such notice, deliver to the clerk of the court a copy of the stenographic minutes of the entire proceedings of the trial certified by the stenographer as an accurate transcript of such proceeding. Such copy shall be filed by the clerk in his office and shall constitute the minutes of the court of the trial and be included in the judgment roll as provided by § 485 of this act. The expense of such copy shall be a county charge, payable to the stenographer out of the court fund upon the certificate of the judge presiding at the trial. (Code of Crim. Pro., 1910, § 456.)

**Transcript Required by Justice, Fees for and How Payable.** If the justice presiding requires a copy of any proceedings written out at length from stenographic notes, he may make an order, directing one-half of the stenographer's fees therefor to be paid by each of the parties to the action or special proceeding, at the rate of ten cents for each folio as written out, and may enforce payment thereof. Any such copy shall be accessible to, and may be examined by, any of the counsel in the cause. If there are two or more parties on the same side, the order may direct either of them to pay the sum payable by their side, for the stenographer's fees; or it may apportion the payment thereof among them, as the justice deems just. (Code of Civ. Pro., 1910, § 251.)

**Specifications for Transcripts.** The transcribed minutes of a stenographer, taken in any civil or criminal action, or in any hearing or special proceeding, civil or criminal, shall be written or typewritten on paper of the size hereinafter specified; and all cases, briefs, points or other papers required or used on an appeal from any judgment, determination or order of any court or board shall be printed (when required to be printed by the rules of any court) on paper of a uniform size, as follows: The paper must be ten and one-half inches by eight inches, and bound on the edge of the greatest length. (Id., § 796.)

**Fees for Services Required by Referee Appointed by Appellate Division, First Department.** The fees of a supreme court stenographer for taking testimony or furnishing one copy thereof as provided by § 116 of this chapter when required by an official referee appointed by the appellate division of the supreme court in the first department shall be at the rate of ten cents a folio, to be paid by the county of New York, where the official referee has

been appointed by the appellate division in the first department; and by the county in which the action or proceeding is pending, where the official referee has been appointed by the appellate division in the second department. (Cons. L., Judiciary L., 1909, § 315, as amended by Laws 1915, C. 224.)

See also Laws 1915, C. 270.

**Apportionment of Salary, etc.** When, by provision of law, a justice of the supreme court of this state, by his order, in writing, duly entered in a county clerk's office in the judicial district of said justice, apportions the stenographer's salary among the several counties of said judicial district, or requires the duplication of any stenographic notes taken in said judicial district, no notice of the application for said order shall be adjudged necessary upon any board of supervisors in said judicial district, and the liability for compensation for such services shall be deemed fixed upon the performance of the work. (Cons. L., Judiciary L., 1909, § 305.)

**Stenographers are Officers of Court.** Each stenographer, specified in this chapter or the code of civil procedure is an officer of the court or courts, for or by which he is appointed. (Id., § 290.)

**Qualifications.** A person shall not be appointed to the office of stenographer unless he is skilled in the stenographic art. (Id., § 291.)

**Original Notes Part of Proceedings.** The original stenographic notes, taken by a stenographer, are part of the proceedings in the cause. (Id., § 292.)

**Stenographers Must Not be Interested in Printing Contracts.** No stenographer of any court in this state shall be, or become, interested, directly or indirectly, as contracting party, partner, stockholder or otherwise, in, or in the performance of, any contract, work or business relating to the preparation or printing of any case, or any case and exceptions, or any case containing exceptions on appeal, or any bill of exceptions, or papers on appeal from non-enumerated motions, or briefs or points of counsel in any case in any court of this state. If any such stenographer shall be, or become, so interested in any such work of preparation or printing, unless the same shall be devolved upon him by law, he shall forfeit his office. (Id., § 293.)

**Oath.** Each stenographer specified in this chapter or the code of civil procedure, before entering upon the discharge of his duties, must subscribe the constitutional oath of office, and file the same in the office of the clerk of the court, or, in the supreme court, in the office of the clerk of the county where the term sits, or the judge resides, by which or by whom he is appointed. (Id., § 294.)

**Must Take Full Stenographic Notes.** Each stenographer specified in this chapter or the code of civil procedure must take full stenographic notes of the testimony and of all other proceedings in each cause tried or heard. Such stenographer shall take complete stenographic notes of each ruling or decision of the presiding judge, and when the trial is by jury each and every remark or comment of such judge during the trial, when requested so to do by either party, together with each and every exception taken to any such ruling, decision, remark or comment by or on behalf of any party to the action. (Id., § 295.)

**Changing Minutes.** After any ruling, decision, remark or comment of a judge during a trial, duly excepted to, has been made the same shall not be altered or amended by the stenographer in the minutes furnished by him without the consent of the party excepting thereto whether the same is made during the charge of the court to the jury or at any other time during the trial. (Id., § 296.)

**Notes to be Filed when Directed by Court.** Where the court, or a judge thereof, has made an order, pursuant to § 14 of this chapter, directing the stenographer to file with the clerk, forthwith or within a specified time, the original stenographic notes taken upon a trial or hearing, the stenographer must file the same accordingly. (Id., § 297.)

**Preservation of Notes for Two Years when Not Filed.** Unless the original stenographic notes taken upon a trial or hearing, are filed, pursuant to an order, made as prescribed in § 14 of this chapter, they must be carefully preserved by the stenographer, for two years after the trial or hearing; at the expiration of which time he may destroy the same. (Id., § 298.)

**Stenographer Must Preserve Records of Predecessor.** If the stenographer dies, or his office becomes otherwise vacant, before the expiration of the time specified in the last section, the original stenographic notes taken upon trials and hearings must be delivered to his successor in office, to be held by him with like effect, as if they had been taken by him. (Id., § 299.)

**Free Transcripts to Judges upon Request.** Each stenographer, specified in this chapter or the code of civil procedure, must, upon request, furnish, with all reasonable diligence and without charge, to the judge holding a term or sitting, which he has attended, a copy written out at length from his stenographic notes, of the testimony and proceedings, or a part thereof, upon a trial or hearing, at that term or sitting. But this section does not affect a provision of law, authorizing the judge to direct a party or the parties to an action or special proceeding, or the county treasurer, to pay the stenographer's fees for such copy. (Id., § 300.)

**Must Furnish Certified Transcript to Parties on Payment of Fees.** The stenographer shall, upon the payment of his fees allowed by law therefor, furnish a certified transcript of the whole or any part of his minutes, in any case reported by him, to any party to the action requiring the same. (Id., § 301.)

**Duty with Reference to Writing out Proceedings in Full.** The original stenographic notes must be written out at length by the stenographer, if a judge of the court so directs, or if the stenographer is required so to do, by a person entitled by law to a copy of the same so written out. Unless such direction is given, or such a requisition is made, the stenographer is not bound so to write them out. (Id., § 302.)

**Transcripts to Parties on Payment of Fees or Certificate.** Each stenographer, specified in this chapter or the code of civil procedure, must upon request, furnish, with all reasonable diligence, to the defendant in a criminal cause, or a party, or his attorney in a civil cause, in which he has attended the trial or hearing, a copy, written out at length from his stenographic notes, of the testimony and proceedings, or a part thereof, upon the trial or hearing, upon payment, by the person requiring the same, of the fees allowed by law. If the district-attorney, the attorney general or the judge presiding at the trial in a criminal cause, requires such a copy, the stenographer is entitled to his fees therefor; but he must furnish it, upon receiving a certificate of the sum to which he is entitled. The amount thereof must be paid by the treasurer of the county where the trial is held, upon the certificate of the district attorney, attorney-general or the judge presiding at the trial, from the court fund, or the fund from which jurors are paid. (Id., § 303, as amended by L. 1912, Ch. 202.)

**Above Provisions Apply to Assistants.** The provisions of the preceding sections of this article and Section 14 of this chapter are also applicable to each assistant-stenographer, now in office, or appointed or employed, pursuant to any provision of this chapter or the code of civil procedure; except that the stenographic notes, taken by an assistant-stenographer, must, if he dies or his office becomes otherwise vacant, be delivered to the stenographer, to be held by him with like effect, as if they had been taken by him. (Id., § 304.)

**Duty of Board of Supervisors to Provide Funds.** The board of supervisors of each county must provide for the payment of the sums, chargeable upon the treasurer of the county, for the salary, fees, or expenses of a stenographer or assistant stenographer; and all laws relating to raising money in a county, by the board of supervisors thereof, are applicable to those sums. (Cons. L., County L. 1909, § 12, subd. 25.)

**Testimony of a Witness Since Deceased, etc.** The testimony of a party or witness since deceased or insane or who, being a non-resident, has departed from the state, together with all exhibits or documents proved during such testimony, proven by oath to have been so previously taken or read in evidence, may be so given or read in evidence; or the original stenographic notes of such testimony taken by a stenographer who has since died or become incompetent may be so read in evidence by any person whose competency to read the same accurately is established to the satisfaction of the court or officer presiding at the trial of such action or special proceeding. (Code of Civ. Pro., 1910, § 830.)

**Transcript May be Treated as Minutes of Judge.** The notes of an official stenographer or assistant stenographer, taken at a trial, when written out at length, may be treated in the discretion of the judge, as the minutes of the judge upon the trial, for the purposes of this article. (Id., § 1007.)

#### COURT OF APPEALS.

**Salary of Librarian and Stenographer.** The salary of the attendant designated as librarian and stenographer shall be twenty-two hundred dollars per annum; such salary to be paid in monthly installments, and the comptroller is directed to draw his warrant therefor. (Cons. L., Judiciary L., 1909, § 340.)

#### COUNTY COURTS.

**Appointment.** 1. The county judge in either of the counties of Livingston, Onondaga, or Cortland, where issues of fact are triable, may employ a stenographer to take stenographic notes upon trial thereat.

2. The county judge in each of the counties of Albany, Erie, Monroe, Oneida, Rensselaer, Jefferson and Niagara may appoint and at pleasure remove a stenographer of said court.

3. The county judges of the county of Kings, from time to time, must appoint, and may at pleasure remove, two stenographers to be attached to the county court of the county of Kings, and the county judge of the county of Queens, from time to time, must appoint, and may at pleasure remove, one stenographer to be attached to the county court of the county of Queens, and the county judge of the county of Richmond, from time to time may appoint, and may at pleasure remove, one stenographer to be attached to the county court of the county of Richmond.

4. When the board of supervisors of any county except Kings, Queens, Livingston, Monroe, Cortland, Westchester, Onondaga, Albany, Erie, Oneida,

Rensselaer and Niagara, shall provide for the employment of a stenographer for the county court thereof, the stenographer shall be appointed by the county judge.

5. In any county in which there is a special county judge and the official stenographer of such county is engaged in the performance of his duties as such, or shall be necessarily absent with the consent of the judge thereof, the county judge, or special county judge may, in his discretion employ a stenographer. (Cons. L., Judiciary L., 1909, Sec. 197, as amended by L. 1909, Ch. 561, and Laws 1915, C. 91.)

**Duties.** 1. The stenographer of the county court of each of the counties of Albany, Erie, Monroe, Oneida, Rensselaer, Jefferson and Niagara must attend each term of the said court where issues of fact in civil and criminal cases are triable. The stenographers of the county court of Kings and Queens counties must attend each term of said court.

2. The stenographers appointed in the various counties specified in subdivision two of § 197 of this chapter, shall also report and transcribe opinions for the said county judges, as well as special proceedings where a stenographer is required, without additional compensation. The stenographer of the county court of Jefferson county shall as a part of his official duties also act as stenographer to the grand jury of said county, and shall, at the request of the district attorney attend preliminary hearings in criminal cases prior to the action of the grand jury thereupon.

3. The stenographer of the county court of Niagara county shall within twenty days after notice by a party that he intends to appeal, make a case and exceptions or bill of exceptions in a civil or criminal action, or that briefs are to be made or arguments prepared in an action tried before the court without a jury, file with the clerk of said county a transcript of the minutes taken by him upon such trial.

4. Each of the stenographers appointed in the county court of Albany, Kings, Queens and Richmond counties as provided in § 197 of this chapter, may, with the consent of the county judge or judges, appoint an assistant stenographer, to aid him in the discharge of his duties, whose compensation shall be paid by the stenographer appointing him, and is not a county charge. (Id., § 318, as amended by L. 1909, Ch. 561, and L. 1914, Ch. 501.)

**Compensation.** 1. The stenographer of the county court of each of the counties of Livingston, Onondaga, and Cortland, is entitled to a compensation, to be certified by the judge, not exceeding ten dollars for each day's attendance at the request of the judge. The stenographer's compensation is a charge upon the county, and in the county of Livingston may be audited, allowed and paid as other county charges and in the counties of Onondaga and Cortland must be paid by the county treasurer on an order of the court, granted on the affidavit of the stenographer, and the certificate of the judge that the services were rendered.

2. The stenographer of the county court of Albany county shall receive a salary to be fixed by the board of supervisors of said county, not in excess of twenty-five hundred dollars per annum, together with his necessary expenses for stationery to be paid by the treasurer of said county of Albany in equal monthly installments on the certificate of said judge of Albany county that the services have been actually performed, or the expenses necessarily incurred.

3. The stenographer of the county court of Erie county shall receive a salary of three thousand dollars per annum, together with his necessary expenses for stationery to be paid by the treasurer of said county of Erie, in equal monthly installments on the certificate of the county judge of Erie

county that the services have been actually performed, or the expenses necessarily incurred.

4. Each of the stenographers appointed in the county court of Kings, Queens and Richmond counties shall receive a salary of three thousand dollars per annum, to be paid in equal monthly installments.

5. The stenographer of the county court of Monroe county shall receive a salary of twenty-five hundred dollars per annum, together with his necessary expenses for stationery to be paid by the treasurer of said county of Monroe in equal monthly installments in the same manner that the salaries of other officials of said county are audited, allowed and paid.

6. The stenographer of the county court of Niagara county shall receive a compensation of not to exceed ten dollars for each day's attendance, to be paid by the treasurer of said county of Niagara on the affidavit of the stenographer and certificate of the judge that the services have been actually performed. The stenographer of the county court of Niagara county shall be entitled to six cents for each one hundred words of the transcript of his minutes taken upon a trial, and filed by him pursuant to § 313, which shall be certified to by the judge holding the court at which such trial took place. Such sum so certified shall be paid by the county treasurer of said county upon presentation of such certificate.

7. The stenographer of the county court of Oneida county shall receive a salary of fifteen hundred dollars per annum, together with his necessary expenses for stationery to be paid by the treasurer of the said county of Oneida in equal monthly installments on the certificate of the said judge of Oneida county that the services have been actually performed or the expenses necessarily incurred.

8. The stenographer of the county court of Rensselaer county shall receive a salary to be fixed by the board of supervisors of said county on the recommendation of the county judge, together with his necessary expenses for stationery to be paid by the treasurer of said county of Rensselaer in equal monthly installments in the same manner that the salaries of other officials of said county are audited, allowed and paid. The stenographer of the county court of Jefferson county shall receive a salary of twelve hundred dollars per annum, together with his necessary expenses for stationery, to be paid by the treasurer of the said county of Jefferson in equal monthly installments on the certificate of the county judge of Jefferson county that the services have been actually performed or the expenses necessarily incurred.

9. A stenographer appointed, pursuant to subdivision five of § 197 of this chapter, in any county in which there is a special county judge, and the official stenographer of such county is engaged in the performance of his duties as such, or shall be necessarily absent with the consent of the judge thereof, shall be paid such compensation as the judge shall by his certificate fix, not to exceed ten dollars for each day's attendance. The sum so fixed is a charge upon the county, and may be audited, allowed and paid as other county charges. (Id., § 319, as amended by L. 1909, Ch. 560 and 561; L. 1910, Ch. 27 and 625; L. 1914, Ch. 325 and 501; L. 1915 C. 91.)

#### SURROGATES' COURTS.

**Appointment and Salary—New York, Kings, Erie, Albany, Westchester and Queens Counties.** The surrogate of each of the counties of New York, Kings, Queens, Erie, Albany and Westchester must appoint, and may, for cause, remove, a stenographer for his court. In the counties of New York and Kings such stenographers shall receive a salary fixed by law, to be paid as the salaries of clerks in the surrogate's office are paid. In the counties

of Erie, Albany, Westchester and Queens the salary of said stenographer shall be fixed by the board of supervisors, or by the board of estimate and apportionment, as the case may be, and the payment of such salary shall be provided for by such board in the same manner as other county salaries are paid. (Code of Civ. Pro., 1910, § 2495.)

**Same—Other Counties.** The surrogate of each county, except New York, Kings, Bronx, Albany, Westchester, Hamilton, Queens, Richmond and Erie may, in his discretion, appoint, and at pleasure remove, a stenographer for his court, who, except in Sullivan county, shall receive a salary to be fixed by such surrogate, not exceeding in counties having a population less than thirty thousand, eight hundred dollars per annum; in counties having a population of thirty thousand and not more than fifty thousand, not exceeding one thousand dollars per annum; and in counties having a population exceeding fifty thousand, not exceeding twelve hundred dollars per annum, except that in counties in which are located cities of the second class, or in counties in which are located three cities of the third class, such salary shall not exceed eighteen hundred dollars per annum; and in any county wholly containing a city of the first class, such salaries shall not exceed two thousand dollars per annum. The population of the several counties shall be determined by the last preceding census. If a regular stenographer is appointed in Sullivan county, his salary shall be five hundred dollars per annum. The board of supervisors shall provide for the payment of such salary in the same manner as other county salaries are paid. When not actually engaged in the discharge of his duties as stenographer, he shall perform such clerical duties in connection with the surrogate's court as the surrogate directs. In counties wherein the surrogate is also county judge, the stenographer so appointed shall be the stenographer of the county court, and shall perform the duties pertaining to a stenographer of the county court without additional compensation. In counties where, for any cause, a regular stenographer for his court has not been appointed, as provided by this section, the surrogate may, in individual proceedings requiring the services of a stenographer, appoint a stenographer who shall be paid a reasonable compensation, certified by the surrogate in every case in which he takes notes of testimony, from the estate or matter in which such services are rendered. When the regular stenographer appointed under this or the last section is sick, absent, on his vacation, or unable to act for other good cause, the surrogate may designate a stenographer to act temporarily in his place, who shall be paid by the county a reasonable compensation certified by the surrogate. (Id., § 2496, as amended by Laws 1915, c. 221.)

**Duties.** The stenographer of a surrogate's court must, under direction of the surrogate, take full stenographic notes of all proceedings, in which oral proofs are given, except where the surrogate otherwise directs. The testimony must be legibly written out at length by him, from his notes when required by the surrogate; and the minutes thereof, as so written out, must after being authenticated, as prescribed in the next section, be filed in the surrogate's office, and in all cases his stenographic books must be so filed and remain in the surrogate's office five years. (Id., § 2497.)

**Transcript Authenticated, Bound and Filed.** The minutes of testimony written out as prescribed in the last section, or taken by the surrogate, or under his direction, while the witness is testifying, must, before being filed, be authenticated by the signature of the stenographer, referee, the surrogate or the clerk of the surrogate's court, as the case may be, to the effect that they are correct. The minutes of testimony written out by the



stenographer must be bound, at the expense of the county, in volumes of convenient size and shape, indorsed "Stenographic Minutes," and numbered consecutively. (Id., § 2498.)

**Transcript Fees.** A stenographer, appointed or acting pursuant to §§ 2496 and 2497 of this act, may charge and receive a sum not exceeding six cents per folio for furnishing a copy of the minutes, proceedings and testimony taken in surrogate's court to any person who applies for the same. (Id., § 2500.)

**Cost of Transcript Charged to Estate, When.** The surrogate may order a copy of the stenographer's minutes to be furnished to the contestant's counsel, and charge the expense thereof to the estate, if he shall be satisfied that the contest is made in good faith. (Id., § 2746.)

### GRAND JURIES.

**Appointment.** It shall be lawful for the district attorney of any county of this state, to appoint a stenographer to take the testimony given before the grand juries in said county. In the counties of Erie and Kings, it shall be lawful for the district attorney of each of such counties to appoint two stenographers, each of whom shall have authority to take and transcribe the testimony given before the grand juries in the said counties of Erie and Kings respectively. In the county of New York, it shall be lawful for the district attorney of such county to appoint three stenographers, each of whom shall have authority to take and transcribe the testimony given before the grand juries in said county of New York, and such appointments shall be in writing, under the hand and seal of such district attorney, and shall be filed in the county clerk's office of said county of New York. In the county of Monroe, it shall be lawful for the district attorney of such county to appoint three stenographers, to be known as the first, second and third stenographer, each of whom shall have authority to take and transcribe the testimony given before the grand juries in said county of Monroe, and each of whom shall be considered as an assistant to the district attorney and under his direction and control. Every stenographer so appointed, whenever directed by the district attorney, shall have authority to attend upon and take and transcribe the testimony given at coroner's inquests and the examination and trial of criminal cases, which said testimony so taken and transcribed shall be for the exclusive use and benefit of the district attorney, unless otherwise ordered by the court, or otherwise agreed upon by the district attorney. The appointment of a stenographer by said district attorney shall be deemed a revocation of any prior appointment of a stenographer. (Code of Crim. Pro., 1910, § 952p.)

Note: As to Jefferson county, see under County Courts, Cons. L., Judiciary Law, § 318, as amended by L. 1909, ch. 561, and L. 1914, ch. 501.

**To Be a Citizen and Resident of County—Exception.** Every stenographer appointed under the provisions of this title shall be a citizen and resident of the county in which he is appointed, except that the district attorney of Hamilton county may appoint a stenographer residing in the county of Fulton. (Id., § 952q.)

**Appointment in Writing and Filed—Oath.** Every appointment made pursuant to this title shall be in writing under the hand of the official who makes the same, and shall be filed in the clerk's office of the county in which such appointment is made. Every appointee, before he enters upon the duties of his office, shall take and subscribe the constitutional oath of office, and shall make oath before the county clerk that he will keep secret all matters and things occurring before such grand juries. (Id., § 952r.)

**Revocation of Appointment.** Any appointment made under the provisions of this title may be revoked by the district attorney, which revocation must be in writing and be filed in the office of the clerk of the county in which such appointment was filed. (Id., § 952s.)

**Duties.** It shall be lawful for any stenographer duly appointed and qualified as hereinbefore provided, to attend and be present at the session of every grand jury impaneled in the county in which he is appointed, and it shall be his duty to take in shorthand or upon a typewriting machine the testimony introduced before such grand juries, and to furnish to the district attorney of such county a full copy of all such testimony as such district attorney shall require, but he shall not permit any other person to take a copy of the same, nor of any portion thereof, nor to read the same, or any portion thereof, except upon the written order of the court duly made after hearing the said district attorney. All of the said original notes and minutes shall be kept in the custody of said district attorney, and neither the same, nor a copy of the same, or any portion of the same, shall be taken from the office of said district attorney excepting as above provided. (Id., § 952t.)

**Violation a Misdemeanor.** Every stenographer appointed as aforesaid, who violates any provision of this title is guilty of a misdemeanor. (Id., § 952u.)

**Same.** A stenographer appointed to take testimony given before a grand jury who permits any person other than the district attorney to take a copy of such testimony or of any portion thereof or to read the same or any portion thereof, except on the written order of the court, is guilty of a misdemeanor. (Cons. L., Penal L., 1909, § 1784.)

**Compensation.** Each stenographer appointed as aforesaid shall receive such compensation for services rendered while engaged in taking testimony before a grand jury, as shall be determined by the board of supervisors of the county in which he is appointed, excepting that in the county of New York, such compensation shall be fixed by the board of estimate and apportionment of the city of New York, and such compensation shall not be less than five nor more than ten dollars per day; and in addition thereto such stenographer shall be entitled to and shall be allowed for a copy of testimony furnished to the district attorney the same rate per folio as is now allowed to the stenographers of the county court or court of common pleas, in their respective counties, and such stenographer shall receive the same compensation for all copies of the evidence in excess of three copies, furnished by him to the district attorney. Such compensation shall be a county charge, and shall be paid by the treasurer of such county upon the affidavit of the stenographer and the certificate of the district attorney specifying the number of days of actual service and the number of folios furnished, excepting that in the counties of Erie and Monroe the salaries of said stenographers shall be fixed by the board of supervisors; and excepting that in the counties of Queens and Oneida said stenographer shall receive a salary of one thousand dollars per annum, and in the county of Orange, twelve hundred dollars per annum; and excepting that in the county of Kings the salaries of said stenographers shall be fixed by the board of estimate and apportionment of the city of New York. Such salaries shall be a county charge and shall be paid monthly, and in Erie county semi-monthly, by the treasurer of said county in the same manner as the salaries of other county officers are paid. (Code of Crim. Pro., 1910, § 952v.)

**Temporary Stenographer.** In case of the absence by reason of illness, or other cause, of the official stenographer to any grand jury in any county of this state, the district attorney of the county may designate a stenographer to perform the duties of such official stenographer during such absence and the stenographer so designated shall receive the compensation which the official stenographer would have received for the same service, and the same shall be deducted from the salary of the official stenographer. (Id., § 952w.)

#### DISTRICT ATTORNEYS.

**Stenographers Appointed By.** In any county having, according to the last preceding federal or state enumeration, more than 55,000 inhabitants, the district attorney may, when authorized by the board of supervisors, appoint assistant district attorneys, detectives, stenographers or interpreters for his office. The salaries of any such officers so authorized to be appointed by the district attorney shall be fixed by such board of supervisors. (Cons. L., County L., 1909, § 202.)

#### PRELIMINARY HEARINGS.

**Record Made by Stenographer.** Upon any examination provided for in this chapter, by or before any police justice or magistrate by whom an official stenographer shall have been appointed, under provision of law therefor, stenographic minutes of the proceedings and of the examination, depositions of witnesses and statement of the defendant, if any, shall be taken by such stenographer, and such minutes, when so taken and when certified by the stenographer and by the justice or magistrate who held such examination, shall be regarded as actually taken down in writing by said justice or magistrate and subscribed by the witness or witnesses at such examination and by the defendant, and as fully complying with the requirements of this chapter in reference to the taking and subscribing of such examination, depositions and statement. (Code of Crim. Pro., 1910, § 221b.)

**Same—Police Magistrates in Brooklyn.** In an examination held in any criminal proceeding by a police magistrate in the city of Brooklyn, the testimony of each witness may, in the discretion of the magistrate, be taken as a deposition by the official stenographer of the court in which said magistrate holds such examination. Such minutes of the testimony when so taken, and when certified by the stenographer and by the magistrate who held such examination, shall both, with reference to such examination, and in all procedure in connection with such examination, provided for by any section of this code not inconsistent herewith, be regarded as actually taken down in writing by such magistrate and subscribed by the witness or witnesses at such examination. (Id., § 60.)

**Same—Certain Towns.** In any town where the assessed valuation of property exceeds five million dollars, the magistrate before whom any criminal action or proceeding is brought may, if convenience requires and with the consent of the supervisor, employ a stenographer to take the minutes of such action or proceeding, who shall be allowed and paid the fees prescribed by law for stenographers in courts of record. (Laws 1915, c. 22, § 126.)

#### COURT OF GENERAL SESSIONS OF CITY AND COUNTY OF NEW YORK.

**Appointment.** The judges of the court of general sessions of the city and county of New York must appoint not more than six stenographers. (Code of Crim. Pro., 1910, § 55.)

**Compensation.** The stenographers appointed by the judges of the court of general sessions of the peace in and for the county of New York shall receive an annual salary to be fixed by said judges, or a majority of them, payable in monthly installments. (Cons. L., Judiciary L., 1909, § 316, as amended by L. 1910, ch. 180, L. 1913, ch. 491, and L. 1913, ch. 599.)

#### COURT OF SPECIAL SESSIONS OF NEW YORK CITY.

**Appointment, Removal and Compensation.** The board of city magistrates in the city of New York may appoint stenographers and remove the same. They may fix and from time to time alter the salaries to be paid such stenographers, but the board of estimate and apportionment may in its discretion at any time, reduce the salary to be paid. (Laws of 1895, Ch. 601, § 4, as amended by Laws 1897, Ch. 382.)

#### COURT OF CLAIMS.

**Appointment, Removal and Duties.** The court of claims shall appoint and may at pleasure remove a stenographer, who shall perform such duties as the court may prescribe. (Code of Civ. Pro., 1910, § 266.) (See also Laws 1915, c. 1.)

#### CITY COURT OF NEW YORK.

**Appointment—Duties—Compensation.** The justices of the court or a majority of them must appoint nine stenographers of the court, and may at pleasure remove either of them. The justices of the court, or a majority of them, must, from time to time, assign each of the stenographers to duty at the trial or special term. Each stenographer is entitled to a salary, fixed and to be paid as prescribed by law, and must attend the term to which he is assigned. (Code of Civ. Pro., 1910, § 332.)

**Suspension.** A justice of the court may, by an instrument under his hand, suspend a stenographer, or an officer specified in the last section, for a period not exceeding ten days from the filing thereof. Such an instrument must express the cause of the suspension; it must be filed in the office of the clerk of the city and county of New York; and it may be revoked, at any time before the expiration of the period of suspension, by an instrument filed in like manner, under the hand of the justice who executed the first instrument, or the hands of a majority of the justices of the court. Where such an instrument has been revoked, the officer shall not be again suspended for the same cause. (Id., § 337.)

#### MUNICIPAL COURT OF NEW YORK CITY.

**Transcript Furnished Clerk.** When an appeal is taken the stenographer's minutes of the evidence must be furnished to the clerk, by the stenographer, within ten days after the fees therefor have been paid. (Laws 1915, c. 279, § 161.)

**Transcript Fees.** In all cases of appeal from an order, final order or judgment, where a transcript of the stenographer's minutes of the testimony given on trial or hearing, becomes a necessary part of the return on appeal, the stenographer's fees for making up such transcript shall be ten cents for every one hundred words actual count and shall be paid in the first instance by the appellant, and be taxable by him as a disbursement on the appeal. (Laws 1915, c. 279, § 177.)

## LEGISLATURE.

**Appointment.** In addition to various stenographers for committees and officers, the senate and the assembly may each choose a stenographer; and either house, by a majority vote, may employ a stenographer for a committee of investigation or other special committee. (Cons. L. Legislative L., 1909, §§ 6, 7 and 9.)

**Compensation.** The compensation to be paid to the stenographer of each house, for the annual session of the legislature, shall be two thousand five hundred dollars. (Id., § 10.)

**Duties.** The stenographers shall attend at every session of the body for which they are appointed or elected and take stenographic notes of the debates of such body and in the committee of the whole thereof, and furnish a copy thereof written out in longhand, to any member of such body. (Id., § 19.)

## TRANSCRIPTS FOR REFORMATORIES.

**To be Furnished Clerk by Stenographer—Compensation for.** Every clerk of any court by which a criminal is sentenced to a reformatory shall furnish to the officer having the criminal in charge, a record of the proceedings, including a full copy of the testimony, which shall be furnished to the clerk by the stenographer acting upon the trial, for which the stenographer shall be entitled to such compensation as shall be certified to be just by the judge presiding at the trial, and shall be paid by the county as a part of the court expenses. (Laws of 1887, Ch. 711, § 7.)

## NORTH CAROLINA

There are no general acts providing for official stenographers in the Superior Courts. There are local acts for the various judicial districts, or counties, with varying provisions. These are voluminous, and in some instances two or three acts have been passed for the same district or county without reference to, and without repeal of, former acts. In many places the acts are not followed, it having been impossible to obtain a reporter at the rates fixed. In some cases, by consent of counsel and the court, a reporter has been employed at the rate of \$10 per day, and 25 cents per page for original transcript, and 15 cents for carbon copies.

The provisions of the various local laws are so different that it is impossible by means of a table to indicate accurately the situation in the state, but the following excerpts from the laws show their general trend:

**First District.** The stenographer shall take full stenographic notes in every case tried during the term, and such notes as may be requested by the judge at chambers; and shall furnish transcript at such time as directed, if practicable not to exceed one day, and upon appeals, unless further time be granted, within five days, furnishing one copy to counsel for each party. Per diem, six dollars. Transcript, 7½ cents per folio; before referee, 10 cents. (Laws 1913, c. 772, as amended by Laws 1915, c. 247.)

**Fourteenth District.** Stenographer must file a bond of \$2,000, attend all terms, and take full and complete stenographic notes in every case tried or heard, except arguments. Must furnish transcript to court and counsel of either party, but shall not be required to furnish transcript during trial unless request is made in writing signed by counsel before examination of first witness. Term of office four years, unless removed for cause on complaint of ten practicing attorneys of the district after a hearing. Compensation, \$2 in misdemeanor cases, in all felonies \$3, except in capital felonies \$10, and in all civil cases \$3. The amount may be increased by the judge in capital cases. For transcripts on appeal, he shall receive five cents per folio for one copy. (Laws 1908, c. 80.)

**Cherokee County.** A stenographer able to write 125 words per minute is appointed by the judge. Compensation fixed by the judge. Unless otherwise ordered, he shall within five days from the rising of the court, furnish the judge and counsel for each party a typewritten copy of the entire record. (Laws 1913, c. 352.)

**Cleveland, Lincoln, Rutherford and Mitchell Counties.** Stenographer shall at expense of appellant make transcript of proceedings, and without additional cost file an extra copy with the clerk, and the rate to be charged shall not exceed six cents for one hundred words when transcribed verbatim, or twelve cents when written up in narrative form. (Laws 1915, c. 490.)

**Craven County.** Stenographer must take full notes of all cases tried, and must furnish to judge and counsel transcripts free of charge, so that same may be used by the judge in his charge and by counsel in their argument. Salary not to exceed \$25 per week or fraction of week for time actually employed, and said stenographer shall employ out of the salary allowed sufficient typewriter operators to transcribe all shorthand notes to meet the requirements of this act. (Laws 1903, c. 646, as amended by Laws 1905, c. 14.)

**Johnston County.** Said stenographer shall be present at all cases tried, and report the same under the direction of the judge. In cases appealed, he shall file with the clerk before he leaves Smithfield a duplicate transcript of the entire record, and his work in this respect shall not be con-

sidered as extra work. The services of the stenographer may be dispensed with owing to incompetency, or if it appears that the gross fees arising hereunder do not approximately reach the salary of \$35 per week or fraction of a week authorized to be paid such stenographer. (Laws 1913, c. 510.)

**Lee, Scotland, Moore and Richmond Counties.** All stenographers paid by county or state shall before entering upon their work file a statement that they submit themselves to the jurisdiction, orders and decrees of court in all matters appertaining to the work to be done, and any stenographer who fails to comply with same shall not do any official court reporting in said counties. In case of dispute between stenographer and counsel as to the amount to be paid for transcript, the clerk or judge shall settle the same. (Laws 1915, c. 416.)

**Lenoir County.** Salary fixed by clerk at not exceeding \$7.50 per day, with traveling expenses, and transcript fee of seven cents per folio for original, and must furnish three copies. (Laws 1913, c. 688.)

**Moore County.** The county commissioners are authorized to employ a court stenographer at a compensation not exceeding \$35 per week. (Laws 1913, c. 736.)

**Pitt County.** Clerk appoints a stenographer, who must before a bar committee of three write at the rate of 100 words per minute for five consecutive minutes on new matter. (Laws 1905, c. 618, as amended by Laws 1911, c. 6.)

**Richmond County.** Same qualifications as Pitt county, and no fees shall be paid stenographer failing to furnish court or counsel transcript as provided within the act. (Laws 1903, c. 58, as amended by Laws 1905, c. 41 and c. 100.)

**Rowan County.** Presiding judge shall designate cases to be reported and tax costs. Stenographer receives \$10 per day, and \$5 per half day or fraction thereof. Transcript, five cents per folio for original and one cent per folio for each copy. (Laws 1909, c. 643.)

**Warren County.** County commissioners fix compensation not to exceed aggregate total tax fees, and stenographer receives five cents per folio for transcript, not to exceed \$15 in any case. (Laws 1907, c. 72.)

**Various Counties.** Judge holding superior court in any county of the state shall employ a competent stenographer at not to exceed \$5 per day and actual expenses. Stenographer shall make three copies of the record in every case appealed without extra charge. This act applies only where no court stenographer is authorized by law. (Laws 1913, extra sess., c. 69.)

# NORTH DAKOTA

## DISTRICT COURTS.

**Appointment—Oath—Term—When Substitute Allowed.** The judge of the district court in each judicial district may, whenever in his judgment it will expedite the public business, appoint a competent person to the office of court stenographer within his district. The order of appointment shall be filed in the office of the clerk and entered upon the records of the court in each county of the district and the persons so appointed shall take and subscribe the oath required of other civil officers and file the same in the office of the secretary of state, and shall hold his office and discharge the duties thereof in person until the order for his appointment is revoked, or another person is appointed to such office. In case such stenographer shall be incapacitated from acting the judge may appoint some suitable person to act in his place, whose minutes, transcripts and certificates shall have the same force and effect as though made by such official stenographer, but the certificates made by such person shall be under oath. (Rev. Codes, 1905, § 481.)

**Duties.** Such stenographer shall attend the sessions of the court within the district whenever the judge shall so direct, and shall take in shorthand all testimony given orally by the witnesses and all objections and rulings made and exceptions taken, also the instructions given orally by the court, and all other proceedings at the hearing or trial not reduced to writing. (Id., § 482.)

**Original Notes Filed with Clerk.** The original shorthand minutes so taken, with the endorsement thereon in longhand over the signature of the stenographer, giving the title of the action and stating the contents and time and place of taking, shall in every case be filed in the office of the clerk of the court of the county in which the action is pending at the conclusion of the trial or as soon thereafter as practicable, but the same may be withdrawn by the stenographer at any time for a reasonable period for the purpose of transcribing. (Id., § 483.)

**When Transcript to be Made.** The judge may, in a criminal action, upon the application of the defendant or the state's attorney, or whenever in his judgment there is reasonable cause, order a transcript of the original minutes or any part thereof to be made at the expense of the county, and such stenographer shall plainly transcribe the same into longhand accordingly and file such transcript in the office of the clerk, and he shall at any time at the request of any party to a civil or criminal action, upon payment of his fees as provided by law, in like manner transcribe his original minutes or any part thereof taken in such action, and deliver the same to the party ordering such transcript, who may file the same in the office of the clerk whenever he shall so elect. (Id., § 484.)

**Transcript Available to Either Party.** Each transcript filed as herein provided shall be available alike to either party to the action for the purposes hereinbefore set forth. (Id., § 485.)

**Certificate to Transcript.** Such transcript must be in each case certified by the stenographer to the effect that it is a correct transcript of his original shorthand minutes, and a full, true and complete statement of the testimony and other proceedings which it purports to contain, and when he has ceased to hold his office as stenographer of the court he must make such certificate under oath. (Id., § 486.)



**Compensation—Mileage, Per Diem and Transcript Fee.** The stenographer shall be entitled to receive from each county in which he is required to attend court reimbursement for his traveling expenses at the rate of five cents for each mile actually and necessarily traveled in going thereto and returning therefrom, and compensation for his time actually employed in attending court therein in such sum as the judge shall allow, not exceeding ten dollars per day, all of which shall be audited and paid by the proper county on the order of the judge. For making transcripts as herein provided he shall be entitled to receive such compensation as the judge shall allow, not exceeding fifteen cents\* for each folio of one hundred words, and the same, when ordered by the judge, shall be paid by the county chargeable with the costs of the action, and in all other cases by the party requesting such transcript. Upon request of any party the official stenographer of the district or county court shall, at the time of making a transcript of the proceedings, make four additional copies thereof, and for the making of said four copies, such stenographer shall be entitled to charge, in addition to his fee for the making of the original transcript, ten cents per folio of one hundred words. (Id., § 487, and Ch. 131, Laws of 1913.)

\*Note: The folio rate is uniformly fixed at fifteen cents. In appeals to the Supreme Court five copies of the testimony are required, and usually ordered. Unless copies are made by the reporter, the attorney cannot charge costs for same if successful on appeal.

#### REVISED PRACTICE ACT.

The Revised Practice Act, Laws of 1913, Ch. 131, provides in detail for the manner of taking appeals, and for the preparation of the record in the case. It directs that within thirty days after the notice of the entry of judgment or the order to be reviewed, or such further time as the court shall allow, a transcript of the evidence must be procured, etc. Provision is made for certification of the record after correction in the transcript, if any correction is necessary.

**Printed Abstract Not Necessary.** Upon any appeal to the supreme court, it shall not be necessary to file or use any printed abstract or statement of the case, but in lieu thereof, the appellant shall cause to be filed in the lower court and returned to the Supreme Court with the other record, two copies, in addition to the original, of the statement of the case as settled and certified. (Laws of 1913, Ch. 131, § 15.)

Note: The reporter makes two more copies, one for service on respondent and one for office copy for appellant. Rules provide that transcript shall be made on 8½x11 paper, with black ribbon and black carbon, on paper not less than 10 lbs. per ream of folio, numbered not less than 25 nor more than 30 lines, with a margin of 1½ inches on the left hand side. All witnesses, exhibits, etc., to be indexed, and exhibits to be described in the index. The Supreme Court has advised reporters that it is not necessary to make any copies of exhibits. Where parties request exhibits copied, a charge is generally made of 10 cents per folio for the five copies.

#### COUNTY COURTS.

**Appointment—Qualification—Duties—Compensation.** The judge of any county court having civil or criminal jurisdiction is authorized in his discretion to appoint a court stenographer of such court. Such stenographer shall qualify in the same manner and his duties and compensation shall be the same as the court stenographer of a district court; such compensation shall be paid in the same manner as that of the court stenographer of the district court; provided, that such court stenographer shall not be appointed in any county having less than eight thousand inhabitants, unless the board of county commissioners shall first authorize such appointment. (Rev. Codes, 1905, § 8319.)

## OHIO

Note: There is a general civil service law in Ohio, but official stenographers and such other "officers and employes of courts of record as the commission may find it impracticable to determine their fitness by competitive examination" are placed in the unclassified service and exempted from examination and the protection of the act. Code §§ 486-8a10, passed in 1915.

### COURT OF APPEALS.

**Appointment—Oath—Duties.** Each Court of Appeals may appoint one or more official stenographers. They shall take an oath of office, serve at the pleasure of the court, perform such duties as the court directs, and have such powers as are vested in official stenographers of the common pleas court. (Laws 1913, p. 412; Code, § 1520.)

**Compensation—Expenses.** The compensation of such stenographer shall be fixed by the court and be payable from the state treasury upon the certificate of the presiding judge of the district in which he serves. The total compensation paid to stenographers in any district in a year shall not exceed the sum of eighteen hundred dollars. Such stenographers shall also receive their actual expenses for traveling when attending court in any county other than that in which they reside, to be paid in like manner; and in no event shall such compensation exceed three hundred dollars in a year. (Id.; Code § 1521.)

Note: There are eight appellate districts in the state to which §§ 1520 and 1521 are applicable. The court of appeals was formerly known as the circuit court. Prior to the passage of the above law, the official stenographers of the court of common pleas were also the officials of the circuit court.

### COURTS OF COMMON PLEAS, SUPERIOR AND INSOLVENCY COURTS.

**Appointment—Term—Oath.** When in its opinion the business requires it, the court of common pleas of a county may appoint a stenographic reporter as official stenographer of such court, who shall hold the appointment for a term not exceeding three years from the date thereof, and until a successor is appointed and qualified, unless removed by the court, after a good cause shown, for neglect of duty, misconduct in office, or incompetency. Such official stenographer shall take an oath to faithfully and impartially discharge the duties of such position. (Gen. Code, § 1546.)

Note: The Attorney General of Ohio in a written opinion has held that women are eligible to hold the position of court stenographer.

**Same—Assistant Stenographers.** When the services of one or more additional stenographers are necessary in a county, the court may appoint assistant stenographers, in no case to exceed ten, who shall take a like oath, serve for such time as their services may be required by the court, not exceeding three years under one appointment, and may be paid at the same rate and in the same manner as the official stenographer. Such stenographers when so appointed shall be ex-officio stenographers of the insolvency and superior courts, if any, in such county, and of the circuit courts in such county. (Id., § 1547.)

**Duties.** Upon the trial of a case in any of such courts, if either party to the suit, or his attorney, requests the services of a stenographer, the trial judge shall grant the request, or such judge may order a full report of the testimony or other proceedings, in which case such stenographer shall cause accurate shorthand notes of the oral testimony or other oral proceedings to be taken, which notes shall be filed in the office of the official stenographer and carefully preserved. (Id., § 1548.)

**Fee Taxed and Collected as Costs.** In every case so reported, there shall be taxed for each day's service of the official or assistant stenogra-

phers a fee of four dollars, to be collected as other costs in the case. The fees so collected shall be paid quarterly by the clerk of the court in which such case was tried, into the treasury of such county, and credited to the general fund. (Id., § 1549.)

**Compensation for Attendance.** Each such stenographer shall receive such compensation as the court making the appointment shall fix, not exceeding twenty-four hundred dollars each year in counties where more than three judges of the court of common pleas hold court regularly, and in all other counties not exceeding eighteen hundred dollars per annum. Such compensation shall be in place of all per diem compensation in such courts. Provided, however, that in case such appointment shall be for a term of less than one year, such court may allow a per diem compensation not exceeding the sum of ten dollars per day for each day such stenographer shall be actually engaged in taking testimony or performing other duties under the orders of such court, which allowance shall be in full for all services so rendered. (Id., § 1550.)

**Duty to Make Transcripts.** When shorthand notes have been taken in a case as herein provided, if the court, either party to the suit, or his attorney, requests transcripts of all or any portion of such notes in longhand, the stenographer reporting the case shall cause full and accurate transcripts thereof to be made for the use of such court or party. (Id., § 1551.)

**Compensation for Transcripts.** The compensation of stenographers for making such transcripts shall be not more than eight cents per folio of one hundred words, to be fixed by the common pleas judges of the subdivision. Such compensation shall be paid forthwith by the party for whose benefit a transcript is made. The compensation for transcripts made in criminal cases, by request of the prosecuting attorney or the defendant, and transcripts ordered by the court in either civil or criminal cases, shall be paid from the county treasury, and taxed and collected as other costs. The clerk of the proper court shall certify the amount of such transcripts, which certificate shall be a sufficient voucher to the auditor of the county, who shall forthwith draw his warrants upon the county treasurer in favor of such stenographers. (Id., § 1552.)

Note: The Attorney General of Ohio in a written opinion has held that the stenographer is entitled to the above transcript fees upon preparation and delivery of the transcript, in addition to his compensation for attendance.

**Same, Taxed as Costs—Carbon Copies—Prima Facie Correct.** When ordered by the prosecuting attorney or defendant in a criminal case, or when ordered by the court for its own use, in either civil or criminal cases, the costs of such transcripts shall be taxed as costs in the case, collected as other costs, and paid by the clerk of the proper court, quarterly, into the treasury of such county, and credited to the general fund. When more than one transcript of the same testimony or proceedings is ordered at the same time by the same party, or by the court, the compensation for making such additional transcript shall be one-half the compensation allowed for the first copy, and shall be paid for in the same manner. All such transcripts shall be taken and received as prima facie evidence of their correctness. When the testimony of witnesses is taken before the grand jury by such stenographers, as provided by law, they shall receive for such transcript as may be ordered by the prosecuting attorney the same compensation per folio and be paid therefor in the manner herein provided. (Id., § 1553.)

**May Act as Referees—Office and Supplies Furnished—Notes Preserved.** Stenographers appointed under the provisions of this chapter may be appointed referees to take and report evidence in causes pending in any of

the courts of this state. In the taking of evidence as such referees, they shall have power to administer oaths to witnesses. They shall be furnished by the board of county commissioners with a suitable room in the court house, and with stationery, supplies and other equipment necessary in the proper discharge of their duties and for the preservation of their stenographic notes. Such notes shall be the property of the county and carefully preserved in the office of the stenographers. (Id., § 1554.)

#### GRAND JURY.

**Duties with Reference to—Oath of Secrecy.** The official stenographer of the county, at the request of the prosecuting attorney, shall take shorthand notes of the testimony and furnish a transcript thereof to him and to no other person, but the stenographer shall withdraw from the jury room before the jurors begin to express their views or give their votes on a matter before them. The stenographer shall take an oath, to be administered by the court after the grand jurors are sworn, imposing an obligation of secrecy to not disclose any testimony taken or heard except to such jury or prosecutor, unless called upon in a court of justice to make disclosures. (Id., § 13561.)

#### DEPOSITIONS.

**May Take Depositions.** Depositions may be taken in this state before a judge or the clerk of the supreme court, a judge or clerk of the court of appeals, a judge or clerk of the court of common pleas, a probate judge, justice of the peace, notary public, mayor, master commissioner, official stenographer of any court in this state, or any person empowered by a special commission. (Id., § 11529.)

## OKLAHOMA

### DISTRICT COURTS.

**Appointment—Qualifications—Examination.** The district judge in each judicial district shall appoint, whenever in his judgment it will expedite public business and tend to the more economical administration of justice, a shorthand reporter who shall be well skilled in the art of stenography and competent to perform the duties required of him, which competency shall be ascertained by the applicant writing correctly one hundred and fifty words per minute for five consecutive minutes in open court, the matter not being previously known to him. (Rev. Stats. 1910, § 1785.)

**Duties—When Prejudicial Error.** It shall be the duty of the court reporter to take down in shorthand and to correctly transcribe, when required, all the proceedings upon the trial of any cause, as well as all statements of counsel, the witnesses or the court, made during the trial of any cause or with reference to any cause pending for trial, when required by a party or attorney interested therein, and all other matters that might properly be a part of a case made for appeal or proceedings in error. An attorney in any case pending shall have the right to request the court or stenographer that all such statements or proceedings occurring in the presence of stenographer, or when his presence is required by such attorney, shall be taken and transcribed. A refusal of the court to permit, or when requested, to require any statement to be taken down by the stenographer, or transcribed after being taken down, upon the same being shown by affidavit or other direct and competent evidence, to the supreme court, shall be deemed prejudicial error, without regard to the merits thereof. (Id., § 1786.)

**Compensation.** The stenographer for the district court shall receive an annual salary of one thousand two hundred dollars, to be paid out of the state treasury in the same manner as the salaries of the district judge. In addition to the annual salary of said stenographer he shall charge and receive ten cents per folio for writing transcripts. Provided, that two carbons shall be furnished without charge. (Id., § 1787.)

**Transcript in Criminal Cases—When Paid for by County.** The judge may, upon the application of either party in a criminal case, direct the reporter to make out and file with the clerk of the court a transcript of his shorthand notes when the same is needed in such case, and he shall receive as compensation therefor ten cents per folio; Provided, however, that if before a transcript of the notes is ordered on application of the defendant or his attorney, the defendant shall present to the judge his affidavit that he intends in good faith to take an appeal in the case, and that such transcript is necessary to enable him to prosecute the appeal, and that the defendant has not the means to pay for the same, the court may, at its discretion, order the transcript made at the expense of the county. (Id., § 1788.)

**Transcript for Parties—Fees Taxed as Costs.** The reporter shall, on the request of either party in a civil or criminal case, make out such transcript and deliver the same to the party desiring it, on payment of his fees therefor by such party at the rate of ten cents per folio, which shall be allowed as taxable cost. (Id., § 1789.)

**Duty to Attend Court—Mileage.** The reporter shall proceed from county to county where the district courts are held and shall be in attendance upon said courts to perform such duties as shall be required of him, and shall receive as traveling expenses for each mile actually and necessarily

traveled in going to and returning from each district court, to be paid by the county to which he travels, the sum of five cents per mile. (Id., § 1790.)

**Term—Oath.** The reporter shall hold his office at the pleasure of the judge appointing him, and his oath of office shall be filed in the office of the clerk of the district court. (Id., § 1791.)

**Notes to be Filed—Admissible as Evidence.** The shorthand reporter in any court of record shall file his notes taken in any case with the clerk of the court in which the cause was tried. Any transcript of notes so filed, duly certified by the reporter of the court who took the evidence as correct, shall be admissible as evidence in all cases, of like force and effect as testimony taken in the cause by deposition, and subject to the same objection; a transcript of said notes may be incorporated into any bill of exceptions or case made. On appeal it shall be the duty of the reporter to furnish such transcript when demanded, as required by law. If any reporter ceases to be the official reporter of the court, and thereafter makes a transcript of the notes taken by him while acting as official reporter, he shall swear to the transcript as true and correct, and when so verified, the transcript shall have the same force and effect as if certified while he was official reporter. (Id., § 1792.)

**Stenographer Fee Collected by Clerk.** In all civil actions in the district court, superior court, or the county court in which issue is joined and testimony taken there shall be taxed as costs in the case the sum of two dollars as stenographer's fee, which shall by the clerk be collected and placed in the court fund of the county. (Id., § 5233.)

#### COUNTY COURTS.

**Appointment—Qualifications.** The judge of the county court may appoint, in writing, whenever in his judgment it will expedite public business, a shorthand reporter, to be known as County Stenographer, who shall be ex-officio deputy clerk of the county court, and who shall possess the same qualifications in the art of stenography as is required of such officer in the district court. (Rev. Stats. 1910, § 1833.)

**Duties.** It shall be the duty of the county stenographer, under the direction of the county judge, to take down in shorthand the oral testimony of witnesses, the rulings of the court, the objections made, and the exceptions taken during the trial of all civil and criminal cases, and also such other matters as the court shall order, and in all criminal cases to make out and file with the judge or clerk of the county court a transcript of his shorthand notes, when the same shall have been ordered by the court. (Id., § 1834.)

**Term.** County stenographers shall hold their offices at the pleasure of the county judge appointing them, and their official oath shall be filed in the office of the county court and be recorded in the journal of said court. (Id., § 1835.)

**Transcripts—Fees for Paid to County.** The judge of the county court may, upon the application of either party, under the same terms and conditions as prescribed by law in the district court, direct such reporter to make out and file with the clerk of said court a transcript of his shorthand notes. The party ordering the transcript shall pay for the same at the same price and under the same terms and conditions as for like services in the district court, but all such fees shall be paid into the county treasury to the credit of the court fund. (Id., § 1836.)

**To Act as Clerk.** The county stenographer shall occupy and maintain his office in the office of the judge of the county court, and when such sten-

ographer is not engaged in reporting cases or making transcript, it shall be his duty, under the direction of the judge, to perform the duties of a clerk in the county court. (Id., § 1837.)

**Compensation.** The county stenographer shall receive as full compensation such salary as may be fixed and allowed by the board of county commissioners, to be paid monthly out of the county treasury, limited as follows: In counties having a population of not more than fifty thousand, a sum not to exceed seventy-five dollars per month; and in counties having a population of over fifty thousand, a sum not to exceed one hundred dollars. (Id., § 1838.)

#### DEPUTY COUNTY ATTORNEY.

**Appointment.** In counties where the county attorney is allowed one or more deputies, he may, with the approval of the board of county commissioners, in lieu of appointing such deputy, employ a stenographer and assistant counsel, to be employed and paid in the same manner as provided for such deputy county attorney. (Laws 1915, c. 134.)

# OREGON

## CIRCUIT COURTS.

**Appointment—Qualifications.** The judge of each judicial district may, in his discretion, appoint a stenographer, to be attached to the courts held by him, who shall be skilled in the practice of his art, and shall be an officer of the court, and be designated and known as the "Official Reporter of the . . . judicial district of the State of Oregon," who shall hold the office during the pleasure of the judge; and before entering upon the discharge of his official duties, he shall take and subscribe an oath faithfully to perform the duties of his office. (Lord's Oregon Laws, 927; Laws of 1889, p. 142, No. 1, as amended by Laws 1915, C. 260.)

**Assignment, Fifth District.** The present official reporter of the fifth judicial district of the state of Oregon and his successor in office, shall be the official reporter of said district in and for all cases heard or tried by the judge longest continuously in office, or if both have served the same length of time then by the senior judge in age; and the judge appointed under provisions of this act shall appoint a stenographer according to law, who, and whose successor, shall be the official reporter of said district in and for all cases heard or tried by said judge and his successor in office, and whose successor in office shall be appointed by said last named judge or his successor in office. Each of said reporters shall receive compensation for his services in the manner and amount provided by law. (Id. 928; Laws of 1909, c. 131, p. 197, No. 7.)

**Duties.** It shall be the duty of the official reporter, appointed under the provisions of this act, to attend every term of the circuit court in the district for which he is appointed, at such times as the judge presiding may direct; and upon the trial of any cause in any such court, if either party to the suit or action or his attorney, requests the services of the official reporter, the presiding judge may grant such request, or upon his own motion, order a full report of the testimony, exceptions taken, charge of the judge, and other proceedings; in which case the official reporter shall cause accurate shorthand notes of the oral testimony, exceptions taken, charge of the judge, and other proceedings to be taken, which notes shall be filed in the office of the clerk of the court where such trial is had; Provided, that before such an order is made upon the application to the court by either party, the plaintiff or defendant requesting the services of such official reporter, is required as a condition precedent to pay or secure to be paid the per diem fees as hereinafter provided for. (Id., 929, Laws of 1889, p. 142, No. 2.)

**Compensation.** Each official reporter so appointed shall be paid a compensation at the rate of ten dollars per diem for every day actually in attendance upon said court pursuant to the directions of the court, which compensation per diem shall be paid out of any funds not otherwise appropriated in the treasury of the county in which the court is held; and the sworn statement of the official reporter as to the number of days in attendance upon the court, when certified as correct by the judge presiding, shall be a sufficient voucher to the county clerk, upon which he shall draw his warrant upon the treasurer of the county in favor of the official reporter, and when so paid such fees shall be taxed and collected as other costs in the case. (Id. 930, Laws of 1889, p. 142, No. 3.)

**Transcripts—Payment for.** When shorthand notes have been taken in any case as in this act provided, if the court or either party to the suit or action or his attorney requests a transcript of the notes into longhand, the



official reporter shall cause full and accurate typewritten transcripts to be made of the testimony or other proceedings, which shall, when certified to as hereinafter provided, be filed with the clerk of the court where such cause was tried for the use of the court or parties. The fees of the official reporter for making such transcript shall be fifteen cents per folio of one hundred words, and shall be paid forthwith by the parties or party for whose benefit the same is ordered, and when paid shall be taxed as other costs in the case; Provided, that when the defendant in any criminal cause who shall have perfected an appeal from judgment against him presents to the judge satisfactory proof, by affidavit or otherwise, that he is unable to pay for such transcript, the court, if in the opinion of the judge justice will be thereby promoted, may order said transcript to be made; and in all cases when transcripts shall be allowed by the court, when not asked by the parties, the same shall be paid for out of the county treasury in the same manner as herein provided for the payment of compensation for per diem. (Id., 931, L. 1889, p. 142, No. 4.)

**Transcripts as Prima Facie Evidence.** The report of the official stenographer, when transcribed and certified to as being a correct transcript of the stenographic notes of the testimony, exceptions taken, charge of the judge, and other proceedings in the matter, suit, or action, shall be prima facie a correct statement of such testimony, exceptions, charge of the judge, and other proceedings, and may thereafter be read in evidence as the deposition of a witness in the case mentioned in § 841 of the code of civil procedure, and in the case of the death, resignation, expiration of the term of office, or vacancy in office from any other means of the judge before whom such matter, suit or action was tried, the exceptions and the statement thereof provided for by §§ 169, 170, 171 and 172 of such code of civil procedure may be settled and signed by the successor in office of such judge or any judge authorized in such cases to perform the general duties of the judge of such court; Provided, that when the official reporter taking the notes in any cause has ceased to be the official reporter of that court, any transcript made by him therefrom, or made by a competent person under the direction of the court, and duly certified to by him under oath as a full, true and complete transcript of said notes, shall have the same force and effect as though certified in the same manner by the official reporter of said court. (Id., 932; L. 1889, p. 143, No. 5.)

**Stenographers Pro Tem.** That in the event of the absence or inability of the official reporter to act, the judge may appoint a competent stenographer to act pro tem., who shall perform the same duties as the official reporter, and whose report when certified to, shall have the same legal effect as the certified report of the official reporter. The reporter pro tem. shall possess the qualifications and take the oath prescribed for the official reporter, and shall receive the same compensation. (Id., 933; L. 1889, p. 143, No. 6.)

#### SENATE AND HOUSE OF REPRESENTATIVES.

**Election and Appointment of Stenographers.** Upon the permanent organization of the Senate, there shall be elected by ballot seven expert stenographers, and at the same time the president of the Senate shall appoint one stenographer to serve during the session. (Id., 2595.)

Upon the permanent organization of the House of Representatives there shall be elected by ballot eight expert stenographers, and the Speaker of the House shall at the same time appoint one stenographer and a clerk

Or.

SHORTHAND REPORTERS

for the Judiciary Committee, who shall also be an expert stenographer. (Id., 2596.)

**Duties.** The expert stenographers in the House and Senate shall be under the supervision of the Chief Clerk of the House or Senate, as the case may be, to be assigned by him to duty on such committees as may make applications to him for clerks. The chief clerk shall file all applications for clerks or stenographers in the order of applications made. It shall be the duty of all stenographers after completing the work to which they have been assigned, to report to the chief clerk. The working hours for stenographers shall not exceed eight hours a day. (Id., 2599.)

**To Act as Private Secretary.** Any member of the House or Senate may on application to the chief clerk of the house of which he is a member have assigned to him the use of a committee stenographer for one hour daily, in case such stenographer is not engaged in actual work for a committee, such stenographer to act in the capacity of private secretary. (Id. 2600.)

**Compensation.** The expert stenographers in the Senate shall receive five dollars a day, and it is further provided that all expert stenographers for the House of Representatives and Senate shall present a certificate from the Secretary of State as to their proficiency and ability as expert stenographers before they are sworn in or employed in either the Senate or House of Representatives, or by any of the committees of the Senate or House of Representatives. (Id., 2601.)

# PENNSYLVANIA

## CIVIL AND CRIMINAL COURTS.

**Courts of Common Pleas and Orphans' Courts—Appointment—Term—Assistants—Qualifications—Oath.** The law judges of each of the several courts of common pleas, and the judges of the several orphans' courts, in this Commonwealth, shall select and appoint a stenographer, or stenographers, to report all suits and proceedings in their respective courts, as hereinafter provided. Such appointees shall be known as official stenographers of the respective courts, and shall hold their positions during the pleasure of the court. Any official stenographer appointed under this act may, with the consent of the court, temporarily supply a competent assistant or substitute stenographer. Such stenographer and assistant stenographer shall be competent in the art of stenography, and, before entering upon the duties herein provided, shall make oath or affirmation, before the prothonotary or clerk of the particular court, to perform such duties with fidelity; and a copy of such oath or affirmation, signed by the affiant, shall be certified by the prothonotary or clerk administering the same, and filed of record in the proper office. (Act of May 1, 1907, P. L. 135, § 1.)

**Criminal Courts—Employment in—Transcript Furnished Defendant at Expense of County.** The law judges of each of the several courts of oyer and terminer and general jail delivery, and of the courts of the quarter sessions of the peace, shall employ the official stenographer or stenographers of the courts of common pleas of the particular county, to report the proceedings of the said court, whenever requested so to do by any defendant or defendants, or his, her or their counsel, before or during the trial of any case in any of said courts: Provided further, That in all cases tried in the several courts of oyer and terminer and general jail delivery, the defendant or defendants shall be furnished with a copy of the notes of testimony taken at his, her or their request, which said notes shall be paid for by the county in which said case is tried. (Act of May 5, 1911, P. L. 161, § 2.)

**Orphans' Courts—Duties.** The official stenographers of the several orphans' courts shall take full stenographic notes of such proceedings as the judges of such courts shall direct, and, when so directed to report proceedings, shall in any proceeding in any trial of fact report the testimony of all witnesses examined, and matters offered in evidence, and the ruling of the court upon the admission or rejection thereof, as well as the other rulings and adjudications of the trial judges. (Act of May 1, 1907, P. L. 135, § 3.)

**Duties—What Included in Report.** The official stenographers of the several courts of common pleas, when engaged in such courts, or in the courts of oyer and terminer, general jail delivery and quarter sessions of the peace, shall take full stenographic notes of the testimony in all judicial proceedings in any trial of fact, at law or in equity, together with the judge's charge, and of any and every ruling, order or remark of the trial judge, or judges, relating to the case on trial, made in the presence of the jury, in any stage of the proceedings, to which ruling, order or remark either party may except in the same manner and with the same effect as is now practiced in relation to the judge's charge; and upon any trial without a jury, shall likewise report the proceedings, including the testimony of all witnesses examined and matters offered in evidence, and the rulings of the court upon the admission or rejection thereof, and the findings of the court. And it shall also be the duty of such stenographers to take full stenographic

notes of such other matters, in connection with the business of the courts, as the judges of the respective courts, from time to time, may direct. (Id.)

**Transcripts—Certificate.** Every official stenographer shall make, or cause to be made, from his stenographic notes of any trial or other matter of which a copy may be required, a correct typewritten copy or copies, as hereinafter provided; and to the filing copy shall attach a certificate in the following form:

I hereby certify that the proceedings, evidence and charge are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

.....  
 Official Stenographer.

And in the case of any trial or proceeding before a court, without a jury, shall attach a certificate in the same form, omitting reference to the charge. (Id., § 4.)

**Judge's Approval—Filing of Transcript—Admissible in Evidence.** Such transcript shall be approved by the trial judge, if correct, by endorsing as follows:

The foregoing record of the proceedings upon the trial of the above cause is hereby approved, and directed to be filed.

.....  
 Judge.

Such copy, when so certified by the official stenographer and approved by the trial judge, shall be filed in the proper office of the court, and shall thereafter become a record of the proceedings therein reported; and upon any other trial, or in any other proceedings in which it may become material to prove the matters therein reported, such record, or a copy thereof duly certified by the clerk or prothonotary of the proper court; shall be taken and held to be prima facie correct, and, if otherwise admissible in evidence, be admitted without the necessity of calling the stenographer who made the original stenographic report as a witness to prove the same. (Id., § 5.)

**Compensation—Per Diem—Expenses—Annual Salary.** Each official stenographer shall be paid a compensation at the rate of ten dollars per day for every day actually present by himself or his assistant upon a trial or other proceeding, for the purpose of taking notes by the direction of any judge or judges of any of the courts aforesaid, or in attendance upon any of the said judges in connection with the business of the courts, and also be allowed, in addition, such expenses and supplies as the court may deem proper and necessary; said per diem compensation and allowances for expenses and supplies to be paid by the county in and for which the said services are performed, upon the order of the presiding judge. Whenever, in the opinion of the judges of any of said courts, the proper despatch of the business of said courts requires the increased attendance of any official stenographer upon them, or in the court of said judge or judges, they may order and decree that, in lieu of the aforesaid per diem compensation, the official stenographer shall receive an annual compensation of not less than one thousand dollars and not exceeding three thousand dollars, and, in addition thereto, he shall be allowed such expenses and supplies as the court may deem proper and necessary; which said annual compensation and allowance shall be paid by the county in and for which the said services are rendered, upon the order of the presiding judge. (Id., § 6., as amended by Act of May 28, 1915, P. L. 258.)

**Daily Transcript—Filing of Notes.** During the progress of the trial of any cause, upon the order of the court upon its own motion, or upon the motion of counsel and allowance by the court, the official stenographer reporting the proceedings shall, from the stenographic notes thereof, make three typewritten copies, and from day to day as the case progresses supply one copy to the court, one copy to the plaintiff, and one copy to the defendant, or to their respective counsel; and within a reasonable time after the completion of the trial, to certify a complete copy, as hereinbefore provided, and supply to the parties or their counsel any portion of such copies, not previously supplied, as may be necessary to complete the record. But, where the trial judge and counsel representing the parties to the cause so agree, such copies need not be made, unless subsequently directed by the court, of its own motion, or upon motion of counsel and allowance by the court: Provided, however, That in any case in which an appeal, writ of error, or certiorari has been taken to the Supreme or Superior Court, or in cases of conviction of murder in the first degree, it shall be the duty of the official stenographer forthwith to make, certify and file of record a typewritten copy of the stenographic notes of trial, without any order of the court; payment for which shall be made in the same manner as if directed by the court, but the court may direct additional copies in such cases to be made at the same time with the filing copy, as hereinbefore provided. In all cases in which copies of the stenographic notes are not made or required as hereinbefore provided, it shall be the duty of the official stenographer to file said stenographic notes in the proper office for the record of said proceedings. If thereafter the court or counsel desire a copy or copies of the stenographic notes so filed, it shall be the duty of the official stenographer to make the same; and, if ordered by the court, compensation therefor shall be made as provided in § 8 of this act, and, if ordered by counsel, without an order of the court, then the compensation therefor shall be paid by the party ordering the same, at the regular rate for the transcription of notes as provided in § 8 of this act. (Id., § 7.)

**Compensation for Transcripts.** Every official stenographer shall be paid, in addition to the compensation provided in § 6 of this act, fifteen cents for each one hundred words of every copy of the stenographic notes of trials and of other matters in connection with the business of the court, that are furnished to the court or filed of record, and five cents for each one hundred words of every copy that is given to counsel or to parties, if ordered so that they may be typewritten at the same time with the filing copy; payment for such copies to be made by the county in which the case is pending, or for which the work is performed upon the order of the presiding judge. (Id. § 8.)

**Proceedings before Commissioner, Examiner, Referee, Master, Etc.—Compensation.** Any official stenographer, by the agreement of the parties to any suit, action, or proceeding, or of their counsel, before any examiner, master in chancery, special master, referee, commissioner, auditor, or other like officer, appointed by any of the said courts, in any suit, action or proceeding therein pending, may take, under the direction of any such examiner, master in chancery, special master, referee, commissioner, auditor, or like officer, full stenographic notes of such proceedings, and in such cases shall furnish to such officer, upon his request, an accurate typewritten copy of such notes; which copy, when approved in writing by such officer and filed in the office of the proper court wherein any such suit is pending, or a copy of the copy so filed, duly certified by the clerk or prothonotary of the proper court, shall be taken and held to be prima facie correct, and shall be admissible in evidence, without the necessity of calling as a witness the

stenographer who made the original stenographic report to prove the same. The compensation for said services shall be such as may be agreed upon between the official stenographer and the parties or their counsel; and, in the absence of agreement, then the compensation shall be at the per diem rate of § 6, and the transcript rate of § 8, of this act, together with all traveling and hotel expenses of the official stenographer necessarily incurred in pursuance of such employment in such proceeding, to be paid by the unsuccessful party as costs in the cause, or as the court may direct. (Id., § 9.)

**Stenographer to Note Exceptions.** That from and after the passage of this act, it shall not be necessary on the trial of any case, civil or criminal, in any court of record in this Commonwealth, for the trial judge to allow an exception to any ruling of his; but, immediately succeeding such ruling, the official stenographer shall note such exception, and it shall thereafter have all the effect of an exception duly written out, signed and sealed by the trial judge. (Act of May 11, 1911, P. L. 279, § 1, as amended by Act of June 5, 1913, P. L. 421.)

**Time and Manner of Taking Exceptions.** Exceptions may be taken, without allowance by the trial judge, to any part or all of the charge, or to the answers to points, for any reason that may be alleged regarding the same in the hearing of the court, before the jury retires to consider its verdict, or, thereafter, by leave of the court; and they shall be thereupon noted by the official stenographer, and thereafter have all the effect of exceptions duly written out, signed and sealed by the trial judge, at the time of the trial. (Act of May 11, 1911, P. L. 279, § 2.)

**When Transcript to be Made.** The official stenographer shall transcribe the notes of the evidence taken upon the trial of any case, under the following circumstances and those only: (a) When directed by the court so to do; or (b) when an appeal has been taken to the Supreme or Superior Court; or (c) when he shall be paid for a copy thereof by a person requesting him to transcribe it. (Id., § 3.)

**Lodging of Transcript—Objections—Filing.** When the evidence in any case is transcribed, it shall be the duty of the official stenographer to lodge the same with the prothonotary or clerk of the court, and notify the parties interested or their counsel that the same will be duly certified and filed, so as to become part of the record, if no objections be made thereto within fifteen days after such notice. If objections be made, the matter shall be heard by the court, and such order made regarding the same as shall be necessary in order to comport with the occurrences at the trial. If no objections be made, or when, after objection, the transcript shall have been so made to comport with the occurrences at the trial, said transcript shall be duly certified by the official stenographer and by the trial judge, shall be filed of record in the case, and shall be treated as official and part of said record for the purposes of review upon appeal, and shall be considered as prima facie accurate whenever thereafter offered in evidence in the same or any other proceeding, without the necessity of calling the stenographer as a witness to prove the same. (Id., § 4.)

**Exclusion of Testimony before Appellate Courts.** The appellants and appellees, by writing filed and approved by the lower court, may agree that any part of the evidence appearing in the transcript as certified and filed shall be considered as excluded therefrom upon the review of the case by the Supreme Court or Superior Court; and, if they cannot agree, the court below, upon motion of appellants and notice to appellee, may order that any part or portion of the evidence may be omitted by appellant in printing the

transcript for the purpose of review in such case: Provided, however, That appellees may themselves print such evidence, which printing shall be at their own expense, unless otherwise ordered by the Appellate Court; or the Appellate Court may order any part or all thereof to be printed by the appellant, whenever said court shall deem it necessary so to do. (Id., § 5.)

**Exception to Decree Not Necessary on Appeal.** Whenever the decision of a court of record shall appear in the proceedings of a case, it shall not be necessary, for the purpose of a review of that decision, to take any exception thereto; but the case shall be heard by the Appellate Court with the same effect as if an exception had been duly written out, signed and sealed by the court. (Id., § 6.)

**Certification of Evidence Upon Motion for Judgment Non Obstante Verdicto.** Whenever, upon the trial of any issue, a point requesting binding instructions has been reserved or declined, the party presenting the point may, within the time prescribed for moving for a new trial, or within such other or further time as the court shall allow, move the court to have all the evidence taken upon the trial duly certified and filed so as to become part of the record, and for judgment non obstante verdicto upon the whole record; whereupon it shall be the duty of the court, if it does not grant a new trial, to so certify the evidence, and to enter such judgment as should have been entered upon that evidence, at the same time granting to the party against whom the decision is rendered an exception to the action of the court in that regard. (Act of April 22, 1905, P. L. 286; Purdon's Digest, p. 5848.)

**Certification of Evidence Where Jury Have Disagreed.** Whenever upon the trial of any issue a point requesting binding instructions has been reserved or declined, and the jury have disagreed, the party presenting the point may, within the time prescribed for moving for a new trial, or within such other or further time as the court shall allow, move the court to have all the evidence taken upon the trial duly certified and filed, so as to become part of the record, and for judgment in his favor upon the whole record; whereupon it shall be the duty of the court, unless it shall be of opinion that the case should be retried, to so certify the evidence, and to enter such judgment, if any, as under the law should have been entered upon that evidence at the time of the trial, at the same time granting to the party against whom the judgment is rendered, an exception to the action of the court in that regard. (Act of April 20, 1911, P. L. 70.)

**Oral Examination of Judgment Debtor.** The examination shall be taken, reduced to writing, and filed among the records of the case. All expenses of the examination shall be paid by the plaintiff, in the first instance, and shall be taxed as costs and collectible from the defendant, in the same manner as other costs in the case, if it be ascertained thereby that the defendant has property which can be made liable for said judgment. (Act of May 9, 1913, P. L. 197, § 3.)

**Transcript Furnished Wardens in Indeterminate Sentences.** The Clerk of Courts is directed to transmit certain information to the wardens of penitentiaries in cases of indeterminate sentence; and in every case in which stenographic notes of testimony were taken at the time of trial, a copy of such notes of testimony shall likewise accompany such record. (Act of June 19, 1911, P. L. 1059, § 7.)

#### MUNICIPAL COURT (Philadelphia.)

**General Act Made Applicable to.** The court shall appoint such stenographers as shall be necessary; and said stenographers shall be appointed,

and discharge their duties, and be paid compensation under and subject to the stenographers' act of one thousand nine hundred and seven, its amendments and supplements. (Act of July 12, 1913, P. L. 711, § 4.)

#### COMMISSIONERS TO TAKE DEPOSITIONS.

**Appointment of Stenographers as—Oath—Qualifications.** The judges of the supreme court of Pennsylvania, and the judges of the district court, court of common pleas, orphans' court and register's court, and the judges of the court of oyer and terminer and quarter sessions of the peace, for the city and county of Philadelphia, Pa., are hereby authorized and empowered to appoint one or more stenographers, as commissioners to administer oaths and take depositions to be read in the trial of causes in the said courts, and upon motions, rules, petitions and other matters that may be brought before the said court: Provided, That the said commissioner or commissioners so appointed as aforesaid shall be duly sworn by the president judge of the respective courts, to make true and faithful reports of the testimony taken before them as such commissioners: And provided further, That the judges of the said courts shall not appoint any stenographer as a commissioner under this act, who shall not produce a certificate, signed by at least ten members of the Philadelphia bar, in good standing, that said applicant for appointment is duly qualified to perform the duties of said office. (Act of March 26, 1873, P. L. 48.)

#### SENATE AND HOUSE OF REPRESENTATIVES.

**Appointment—Qualifications—Duties—Compensation.** The chief clerk of the Senate is hereby authorized to appoint at the beginning of each regular biennial session of the Senate, and at such other times as may be necessary, two expert stenographers, who shall be known as the official reporters of the Senate, and two expert typewriters. The chief clerk of the House of Representatives is hereby authorized to appoint at the beginning of each regular biennial session of the House of Representatives, and at such other times as may be necessary, three expert stenographers, who shall be known as the official reporters of the House of Representatives, and three expert typewriters. The official stenographers shall take the debates, and such other matter as may be required by the chief clerks and journal clerks of either House, and the typewriters shall transcribe the same. The compensation of each of said official stenographers shall be twelve dollars per diem, for every day of each regular biennial, special or extraordinary session; and the typewriters shall each receive six dollars per diem, for every day of each regular biennial, special or extraordinary session. Each of the above-named officers and employes shall return, as such, to the next regular biennial session of the Legislature following that for which they were appointed; and those who are not reappointed, or appointed or elected to some other office in the Legislature, shall be allowed their regular per diem compensation. Each of the above-named officers and employes shall be entitled to the same mileage, for each regular biennial, special or extraordinary session, as is provided for the other officers of the General Assembly, in § 4 of the act approved April twelfth, one thousand nine hundred and five. (Act of April 23, 1909, P. L. 163.)



## PHILIPPINE ISLANDS

### SUPREME COURT and COURTS OF FIRST INSTANCE.

**Appointment—Compensation—Removal.** Such stenographers, typewriters, interpreters and translators as are needed for the proper transaction of the business of the Supreme Court and Courts of First Instance shall be appointed. The judges of the Supreme Court shall determine the number of such employes that may be necessary for the Supreme Court and for the several Courts of First Instance in the different provinces and for the city of Manila, and the salaries to be paid to such employes, all upon approval thereof by the Chief Executive. The employes named in this section required by either of the courts aforesaid, for the purposes named in this section, shall be appointed by the Attorney General, and may be removed by him for cause, and their successors may be appointed by him; but the successors shall all be appointed from a list of eligibles provided by the Civil Service Board, under the Civil Service Act. (Act No. 152 of the Philippine Commission, enacted June 27, 1901; Pub. Laws and Res., Philippine Commission, 1900-1, p. 331.)

**Duty to Make Transcripts—Compensation for in Certain Cases.** Whenever an appeal is allowed by a Court of First Instance or by the Court of Land Registration, in a civil, criminal or registration matter, or special proceeding, it shall be the duty of the clerk of such court to direct the stenographer or stenographers of such courts to attach, and said stenographer or stenographers shall attach, to the record of the case appealed a transcript of the stenographic notes taken during the trial of the case: Provided, That said stenographer or stenographers shall not charge anything for such transcription. Stenographers shall also give such transcript of such notes to every person requesting same upon payment of (a) thirty centavos for each hundred words, before the appeal is allowed by the proper courts, and (b) fifteen centavos for the same number of words after such allowance. (Act No. 2383 of the Philippine Legislature, approved February 28, 1914.)

## PORTO RICO

### DISTRICT COURTS.

**Appointment—Qualifications.** There shall be appointed for each of the District Courts of Porto Rico, by the Attorney General, a stenographic reporter, who shall be well skilled in the art of stenography and capable of reporting the oral testimony in court verbatim. (Laws 1904, p. 120, § 1.)

**Oath—Bond—Salary.** Said reporter shall take the oath required to be taken by judicial officers; give a bond to be approved by the Attorney General, in the sum of one thousand dollars, conditioned for the faithful discharge of his duties, which bond shall be filed in the office of the Treasurer of Porto Rico; he shall receive a salary of one thousand two hundred dollars per annum, to be paid in the same manner as salaries of other insular officers are paid. (Id., § 2, as amended by act approved March 13, 1907.)

**To Report Oral Proceedings.** The said reporters shall correctly report all oral proceedings had in said courts and the testimony taken in all cases tried before said court, but the parties may, with the consent of the judge, waive the reporting by such reporter of any such proceedings or testimony. (Id., § 3.)

**Notes to be Filed.** The reporter shall file the stenographic records and reports made by him with the secretary of the District Court of the district in which such report was taken and the action was tried. (Id., § 4.)

**Duty to Make Transcripts—Compensation for, etc.** It shall be the duty of each reporter to furnish, on the application of the Attorney General, district fiscal, or any party to a suit in which a stenographic record has been made, a typewritten copy of the record, or any part thereof, for which he shall be entitled to receive, in addition to his salary, a fee of ten cents per one hundred words, to be paid by the party requesting the same, and to be taxed as costs in the case against the party finally defeated in the action; Provided, when such copy is requested on behalf of the People of Porto Rico, or by a defendant in a criminal case, or his attorney, and where after conviction the defendant in a criminal case shall satisfy the court by affidavit or otherwise that he is unable by reason of his poverty to pay for such copy so requested by him or his attorney, the stenographer shall issue such copy free of charge. And in all civil cases in which a party to an action shall file the required affidavit showing his inability to pay the cost required by law, such person shall be entitled to the gratuitous services of the court stenographer on the same terms as the same are given to indigent persons in criminal cases, and the fees of the stenographer shall be included in the costs when the latter are imposed upon the party able to pay same. Such copy of the record shall constitute prima facie the minutes of the court and may be used on all motions for new trials, review or appeal, when minutes of the court may be used. (Id., § 5.)

**Time for Delivery of Transcript.** It shall be the duty of the reporter to deliver said copy within thirty days after being requested, unless the court extends the time, which in no case shall exceed another thirty days. (Id., § 6.)

**Fee of Three Dollars Paid When Complaint is Filed.** The plaintiff in a civil action hereafter commenced in the District Courts, at the time of filing the complaint in such action, shall pay to the secretary of said court the sum of three dollars, which sum the said secretary shall, on the first Monday of the following month after the receipt thereof, pay into the insular

treasury, and it shall be placed by the Treasurer to the credit of the general fund. (Id., § 7.)

**Misdemeanor to Divide Fees to Secure Appointment or Retention in Office.** Every judicial officer who shall ask or receive the whole or any part of the fees allowed by law to any stenographer or reporter appointed by him or any other person, to record the proceedings of any court or investigation held by him, shall be guilty of a misdemeanor, and upon conviction thereof shall forfeit his office. Any stenographer or reporter, appointed by any judicial officer, who shall pay or offer to pay, the whole or any part of the fees allowed him by law for his appointment or retention in office, shall be guilty of a misdemeanor, and upon conviction thereof shall be forever disqualified from holding any similar office in the courts. (Penal Code, § 107, approved March 1, 1902.)

**To Act in Juvenile Court.** The stenographer of the district court of each of the seven districts shall perform the duties of stenographer of the juvenile court within their respective districts, which duties shall be such as may be assigned to them by the court or as this law shall direct. (Laws 1915, Act No. 37, § 6.)

# RHODE ISLAND

## SUPERIOR COURT.

**Appointment—Term—Supplies Furnished—Notes Filed—Attend Grand Jury—Oath.** The justices of the Superior Court, or a majority of them, shall appoint seven competent shorthand writers for regular service in the Superior Court, and one or more such writers for occasional service therein in the absence of other appointees, who shall be known as court stenographers. They shall serve during the pleasure of the Court, and where designated by the presiding justice. All books, papers and supplies necessary for their use shall be furnished by the State, and the notebooks used by them shall be the property of the State, and be deposited with the Clerk of the Court in Providence County. Whenever the Attorney General shall make a request in writing to the presiding Justice of the Superior Court, he shall designate a court stenographer to attend such sittings of any grand jury as the Attorney General may designate, to report stenographically the testimony given before such grand jury, and it shall be lawful for such stenographer to attend such sittings for such purpose; provided, that said stenographer shall not be present during the deliberations of the grand jury, or other proceedings except during the taking of testimony. Such stenographer shall in all cases, before entering upon such duties, be first sworn by the clerk of the court to secrecy. He shall transcribe such testimony as the Attorney General may direct, and all such transcripts, notes and note books shall be delivered forthwith to the Attorney General for his sole use. (Gen. Stats., Rev. of 1909, Ch. 278, p. 960, as amended by Laws of 1913, Ch. 907.)

**Duties—Compensation for Attendance and Transcripts.** Such stenographers shall report stenographically the proceedings in the trial of every action or proceeding, civil or criminal, in the superior court. The stenographers appointed for regular service shall receive as compensation therefor fifteen hundred dollars annually, to be paid by the general treasurer upon the order of the state auditor. The stenographers appointed for occasional service shall receive compensation therefor at the rate of six dollars for each attendance, to be paid by the stenographer appointed for regular service, in place of whom such occasional service shall be performed. Each stenographer shall also, upon the order of any justice of the court, transcribe his report to be filed with the papers in the case. He shall also make a transcript of the whole or any part of such report upon the written request, filed with the clerk, by either party to such action or proceeding, and within the time limited by the court for filing the same, but not later than forty days from the date of such request, except as provided in § 72, Ch. 7, Court and Practice Act, shall immediately deliver the same to the party, and for such service shall be paid a reasonable compensation, not exceeding ten cents for each one hundred words thereof, to be allowed by the court; and in case the transcript is used in subsequent proceedings in said cause the cost of the same may be allowed as a part of the costs. (Id.)

**Extension of Time.** In case of sickness or other disability of the court stenographer who made the report of the evidence and rulings, or for other causes, the Superior Court may on motion therefor, and with or without notice, grant an extension of time for filing a transcript of the evidence and rulings beyond the period of forty days allowed by the preceding section. (Id.)

**Expenses.** The stenographic clerks of the Supreme Court and Superior Court are allowed and paid in addition to the fees provided by law their

actual traveling expenses for traveling and subsistence when performing official duty outside of the limits of the county in which they reside to an amount not exceeding \$350 per annum. (Id., Ch. 363, § 14.)

#### BILLS OF EXCEPTIONS.

**Request for Transcript—Payment for.** Within seven days after a verdict or notice of decision, or after a motion for a new trial has been made, then within seven days after notice of decision thereon, he shall file in the office of the Clerk of the Superior Court, notice of his intention to prosecute a bill of exceptions to the Supreme Court, together with a written request to the court stenographer for a transcript of so much of the testimony as may be required, and shall deposit with the clerk the estimated fees for transcribing such testimony as may be required. The filing of such notice and making of such deposit shall stay judgment or sentence until further order of the court. (Id., Ch. 298, p. 1053.)

#### TRANSCRIPTS ON APPEALS.

**Request for—Fees to be Advanced.** In cases in equity where a claim of appeal has been filed, the appellant at the time of filing such claim shall file a written request with the court stenographer for a transcript of the testimony, and shall advance the estimated fees to the court stenographer for transcribing such testimony as may be required. (Id., Ch. 289, p. 1019.)

**Time for Filing.** The party taking an appeal shall, within ten days after filing claim of appeal, or within such extended time as the Court may allow, but not later than fifty days after the filing of such claim, or, in case the court shall extend the time for filing a transcript of the evidence as provided in § 4 of Chap. 278, but not later than ten days after the expiration of such extended time, file with the clerk a transcript of the testimony taken orally in the cause, if any, or so much thereof as may be agreed by the parties. The clerk immediately upon the filing of the transcript shall present the same for allowance to the Justice who heard the cause, who, after examination, shall restore the transcript to the files of the clerk with a certificate of his action thereon. (Id., Ch. 289, p. 1019.)

**Correctness Determined.** If the transcript has not been allowed by the Justice who heard the cause, or if objection is made thereto by either party, the correctness of the transcript may be determined by petition, as provided in § 21 of Chap. 298 for determining the matter of exceptions. (Id., Ch. 289, § 27.)

#### DEPOSITIONS.

**May be Taken in Shorthand.** Every person before deposing shall be sworn to testify to the truth, the whole truth, and nothing but the truth, and after giving such deposition shall subscribe his name thereto; if taken in longhand, in the presence of the official before whom the same was taken. Such deposition may be reduced to writing by such official, or by any person, including the deponent, under his direction, and in his presence, or may be reduced to writing stenographically, either by such official, or by some person in his presence, and under his direction, sworn by such official to correctly take down in shorthand the evidence as given; and in the latter case, the transcript thereof in longhand writing, typewriting, printing or other reproduction sworn to by the person stenographically reporting the same, and signed by the deponent, shall be received in evidence. The signature in the latter case shall be attested by the official taking the deposition or by some magistrate authorized to administer oaths, whether in this state or elsewhere. (Id., Ch. 292, p. 1031.)

## TRANSCRIPTS AS EVIDENCE.

**When Admissible.** Transcripts from stenographic notes of testimony duly taken in the Superior Court under statutory authority verified by the certificate of the stenographer taking the same, and allowed by the court, shall be admissible as evidence that such testimony was given whenever proof of such testimony is otherwise competent. (Id., Ch. 292, p. 1033.)

## INSOLVENCY PROCEEDINGS.

**Employment of Stenographers.** Registers of Insolvency have power to authorize the employment of stenographers at any time in insolvency proceedings at the expense of the State. (Id., Ch. 339, p. 1235.)

## MASTERS IN CHANCERY, AUDITORS AND REFEREES.

**Employment of Stenographers.** Masters in Chancery, Auditors and Referees may employ stenographers to report and transcribe the testimony taken in causes referred to them, and the cost of the reports and transcripts shall be allowed as part of the costs. (Id., Ch. 293, p. 1038.)

## SOUTH CAROLINA

### CIRCUIT COURTS.

**Appointment—Term—Removal—Duties.** There shall be twelve court stenographers, one for each judicial circuit of the state, who shall be appointed by the circuit judge of the respective circuits for a period not exceeding the term for which the circuit judge making the appointment was elected, and such court stenographer shall be subject to removal by the circuit judge making the appointment. It shall be the duty of every stenographer so appointed, under the direction of the presiding judge of his circuit, to take full stenographic notes of all proceedings, including the rulings and charge of the court in every trial thereat, and in case the presiding judge, or the Solicitor, for use in criminal cases, shall require a transcript of said stenographic notes, the stenographer shall furnish the same written out in full. (Code Civ. Pro., Vol. 2, Laws 1912, § 315.)

**Compensation—Transcript Fees, Forfeiture of—Taxed as Costs.** Each court stenographer shall receive an annual salary of fifteen hundred dollars, payable monthly upon warrants of the comptroller general, and a fee of five cents per hundred words for all transcripts furnished litigants, except in the Second, Fifth and Sixth circuits, where the fees for transcripts shall be ten cents per folio of one hundred words, which fee shall be paid by the parties litigant, except in criminal cases, where the defendant satisfies the court that he is unable to pay for such transcript, when the same shall be furnished without fee by the court stenographer: Provided, that any failure on the part of a court stenographer to furnish a transcript of any case, or any part thereof, within thirty days from the time a demand is made, shall forfeit his right to any pay for said transcript; any sum so paid by any party shall be considered a necessary disbursement in the taxation of costs. (Id.)

Note: Since the passage of this act, an additional circuit has been created, carrying the same salary; and also several local bills have been passed making the transcript fees in practically all the circuits ten cents per folio of one hundred words.

**Substitute—Appointment—Compensation—How Paid.** The circuit judges of this state are hereby authorized to appoint a special court stenographer to act in the place and stead of the regular court stenographer in case of sickness, absence or inability to act at any term or part of a term of either the court of common pleas or general sessions; and such stenographer when so appointed, shall receive not more than the sum of seven and one-half dollars per day for each day he may be in attendance upon said court. It shall be the duty of the presiding judge to certify the number of days any such special stenographer may be engaged in the courts as such; upon this certificate the comptroller general shall draw his warrant upon the state treasurer for the amount due said stenographer for his services, and the said state treasurer is authorized to pay the same. (Id., § 316.)

**For Special Term.** It shall be lawful for the presiding judge at any special term of the circuit court, where the official stenographer is performing the duties of his office at a court then being held in some other county of the circuit, to appoint a stenographer for said term of court, who shall perform the duties of the office of court stenographer for said term of court. (Id., § 3845, p. 1067.) (For compensation see preceding section.)

### COUNTY COURTS.

**Appointment—Duties—Compensation.** The county judge of each county wherein there is established a county court shall appoint for said county

court one official stenographer, who shall attend upon the sessions of said court and perform the same duties in connection therewith as are performed by circuit stenographers in the circuit courts. The said stenographer shall receive from the county wherein he is appointed a salary of \$300 per year. (Vol. 1, Laws 1912, § 3872.)

#### MUNICIPAL COURTS.

**Appointment on Tender of Fees.** In the trial of any case in the municipal court any party shall have the right to have the testimony taken stenographically by a stenographer to be appointed by the recorder, provided such party shall first tender or pay the charges of such stenographer for taking and transcribing the same. (Vol. 1, Code 1912, § 3006.)

#### POLICE COURTS.

**Appointment, and Effect of.** In taking of testimony and preparation of the record in cases of appeal from the said police court, the transcript of the notes of the testimony taken of the trial by a sworn stenographer shall be held to be equivalent to the testimony signed by the witnesses, and the recorder is hereby authorized and empowered to appoint a suitable person as official stenographer of said police court, who, after being duly sworn, shall take all testimony before said police court. (Civ. Code Laws 1912, § 3892, p. 1077.)

#### MASTER OR REFEREE.

**Appointment—Expense Not Taxed as Costs.** The master or referee, at the request of any party to a cause who may tender the necessary expenses incident thereto, may employ a competent stenographer to take testimony in such cause; provided that such expenses shall not be taxed in the costs or included in the disbursements of the same. (Code Laws 1912, Vol. 2, § 332, p. 128.)

#### DEPOSITIONS.

**May be Taken in Shorthand—Read Over After Transcribed.** Every person deposing as provided in the preceding sections shall be cautioned and sworn to testify the whole truth and carefully examined. His testimony shall be reduced in writing by the officer taking the deposition, or by himself in the officer's presence, and by no other person, and shall, after it has been reduced to writing, be subscribed by the deponent: Provided, that this shall not be construed to prevent the use of stenographers for the purpose of taking such testimony, but the testimony taken by such stenographers shall be reduced to writing or typewriting and read over to such witnesses. (Code Laws 1912, Vol. 1, § 3986, p. 1101.)



# SOUTH DAKOTA

## CIRCUIT COURTS.

**Appointment.** The judge of the circuit court in each judicial district may appoint shorthand reporters whenever, in his judgment, the public business will be thereby expedited. (Rev. Codes 1903, p. 123, § 668.)

**Duties—Compensation—How Paid.** The reporter under the direction of the court, shall take down in shorthand the oral instructions of the judge, the objections made and exceptions taken during the trial in all criminal cases, and in civil cases when either the parties or the judge direct, and also such other matters as the court shall order; and for each day actually employed in the performance of such duties, he shall receive such sum as may be fixed by the court, not to exceed ten dollars a day, to be audited and paid by the county or subdivision wherein such services shall be rendered, upon the order of the judge, provided such per diem shall not be allowed to a reporter except for days of a regular or adjourned term of the court when the judge is present and presiding. (Id., § 669.)

**Filing Transcript, Criminal Cases.** The judge may upon the application of either party in a criminal case, direct the reporter to file with the clerk, a transcript of the shorthand notes, and for doing so the reporter shall receive ten cents per folio, to be audited and paid in the same way as the per diem fee. (Id., § 670.)

**Transcripts for Parties—Compensation for—Transcripts as Evidence—Carbon Copies.** The reporter shall upon the request of either party in a civil or criminal case, make and certify a transcript on payment of his fees, at the rate of ten cents per folio, and when so certified the transcript shall by prima facie evidence of the testimony, rulings, etc., upon the trial. For each carbon copy of a transcript, the reporter shall receive five cents per page. (Id., § 671.)

**In Various Counties in Circuit—Mileage.** The reporter shall proceed from county to county where the circuits are held when required by the circuit judge, and be in attendance upon the circuit court, and perform such duties as shall be required of him, and shall receive five cents a mile as traveling expenses for each mile traveled in going to and returning from such circuit court. (Id., § 672.)

**To Accompany Judge.** The official reporter is authorized to accompany the judge of his circuit when he is requested to substitute for another circuit judge. (Ch. 84, Laws of 1905.)

**Term of Office—Oath.** The reporters shall hold their offices until removed by the judge of the circuit court for which they are appointed, for misconduct, incapacity or inattention to duty, and they shall take an oath to support the constitution of the United States and of the State of South Dakota, and to faithfully perform their duties, which oath shall be filed with the clerk of the circuit court. (Rev. Codes 1903, § 673.)

**Transcript Fees Taxed as Costs.** To the prevailing party, upon motion for new trial where no appeal is taken from the order granting new trial, or to the successful party upon an appeal to the supreme court, there shall be taxed by the trial court, the cost of the stenographer's transcript of the evidence and copy thereof which may have been necessarily procured for the purpose of a settled record. (Laws of 1913, Ch. 168, § 1, Par. 7.)

# TENNESSEE

## COURTS OF RECORD.

**Appointment—Qualifications—Oath—Transcript as Bill of Exceptions.** Upon the trial of any cause or proceeding in any court of record of this state, upon request of either party, the judge of said court shall appoint a competent stenographer, who shall first be duly sworn to make a true, impartial and complete stenographic report of the oral testimony given in the trial of said cause or proceedings, as well as the rulings of the judge, and in case of an appeal to a higher court, a transcript of his said stenographic notes shall constitute a part of the bill of exceptions in said cause or proceeding. (Acts of Tenn., 1887, Ch. 217, § 1; Shannon's Code of Tenn., § 4695.)

**Compensation, by Whom Paid.** The party alone at whose instance said stenographer was employed, shall be responsible for his compensation for the work done by him. (Id., § 2; Id., § 4696.)

**Correction of Transcript.** The court or judge before whom any cause is tried in which such stenographer is employed, shall have the right and power to revise and correct the report so made before it becomes a part of the bill of exceptions. (Id., § 3; Id., § 4697.)

## DEPOSITIONS.

**May be Taken in Shorthand—Form of Certificate—Transcript to be Signed by Witness.** Persons authorized to take depositions may take them in shorthand, and subsequently reduce the same to manuscript or typewriting, or may take them directly on typewriting machine; Provided, That in case the deposition be taken in shorthand, the person taking it can truthfully certify, and does certify substantially as follows: "I certify that, being a stenographer, I took the foregoing deposition in the exact language of the witness and reduced it to typewriting (or manuscript). That it was then read over by the witness in my presence (or was read over by me to the witness), and was approved and signed by him; and I also certify that I am not, in any capacity, in the regular employ of the party in whose benefit this deposition is taken, nor in the regular employ of his attorney; and I certify that I am not interested in the case, nor of kin or counsel to either of the parties, and that I sealed up said deposition and delivered it to ..... (or delivered it to the express office, or put it in the postoffice), without it being taken out of my possession, or altered after it was taken." No deposition taken under this act shall be signed by the witness until it shall have been reduced to manuscript or typewriting. (Acts of Tenn., 1899, Ch. 276, § 1; Shannon's Sup. to Code, § 4650.)

**May be Taken by Employe by Consent.** Nothing herein shall prevent the taking of depositions by stenographers in the regular employ of the litigant taking the deposition, or his attorney, where the opposite party consents thereto. (Id., § 2; Id.)

Note: An old act, Acts 1909, c. 160, provides for the taking of depositions by a reputable and competent stenographer or typewriter, who may take the testimony in shorthand and afterwards transcribe it, or directly upon the machine; and provides what the certificate to such deposition shall contain, and that the expense of the stenographer shall be borne by the party requesting the same.

# TEXAS

## DISTRICT COURTS.

**Appointment—Qualifications—Term.** For the purpose of preserving a record in all cases for the information of the courts, jury and parties, the judges of the district courts in all judicial districts of this state composed of only one county or only a portion of one county, and of all other district courts sitting in the same counties therewith, shall appoint official shorthand reporters for such courts, who shall be well skilled in their profession, who shall be sworn officers of the courts and shall hold their office during the pleasure of the court. In all other judicial districts, the district judges thereof shall appoint official shorthand reporters, and the terms of this act shall apply to such appointments. (Acts of 1911, p. 264, § 1; Vernon's Sayles' Civil Stats., 1914, Art. 1920.)

**Examination and Certification.** Before any person is appointed official shorthand reporter under the provisions of this act, he shall be examined as to his competency by a committee to be composed of at least three members of the bar practicing in said court, such committee to be appointed by the judge thereof. The test of competency of any applicant for the position of official shorthand reporter shall be as follows: The applicant shall write in the presence of such committee at the rate of at least one hundred and seventy-five words per minute for five consecutive minutes from questions and answers submitted to him, and in computing the number of words written the words "question" and "answer" appearing in the official shorthand reporter's transcript shall not be counted, and shall transcribe the same with accuracy. If the applicant passes this test satisfactorily, a majority of the committee shall furnish him with a certificate of that effect, which shall be filed among the records of the court, and shall be recorded by the clerk of the court in the minutes thereof. Upon the occasion of subsequent appointments, the presentation of a certified transcript from the clerk of the court of the certificate above mentioned shall be taken as prima facie evidence of the applicant's competency; provided, however, that if the applicant shall have been official stenographer of any district court of this state for not less than two years prior to the filing of his application for said appointment, then such examination by said committee, as herein provided, shall not be necessary. (Id., § 2; Id., Art. 1921.)

**Oath.** Before any one shall assume the duties of official shorthand reporter under the provisions of this act he shall, in addition to the oath required of officers by the constitution, subscribe to an oath to be administered to him by the clerk of any district court, to the effect that he will well and truly, and in an impartial manner keep a correct record of all evidence offered in any case which may be reported by him, together with the objections and exceptions thereto which may be interposed by the parties to such suit and rulings and remarks of the court in passing on the admissibility of such testimony. (Id., § 3; Id., Art. 1922.)

**Duties.** It shall be the duty of the official shorthand reporter to attend all sessions of the court; to take full shorthand notes of all the oral testimony offered in every case tried in said court, together with all objections to the admissibility of testimony, the rulings and remarks of the court thereon, and all exceptions to such rulings; to preserve all shorthand notes taken in said court for future use or reference for four years, and to furnish to any person a transcript in question and answer form of all such evidence or other proceedings or any portion thereof, upon the payment to him of the compensation hereinafter provided. (Id., § 4; Id., Art. 1922.)

**Transcripts—Compensation for.** In case an appeal is perfected from the judgment rendered in any case, the official shorthand reporter shall transcribe the testimony and other proceedings recorded by him in said case in the form of questions and answers, certifying that such transcript is true and correct, and shall file the same in the office of the clerk of the court within such reasonable time as may be fixed by written order of the court. Said transcript shall be made in duplicate; for which said transcript the official shorthand reporter shall be paid the sum of fifteen cents per folio of one hundred words for the original copy and no charge shall be made for the duplicate copy, said transcript to be paid for by the party ordering the same on delivery, and the amount so paid shall be taxed as costs. (Id., § 5; Id., Art. 1924.)

**Statement of Facts in Narrative Form.** Upon the filing in the office of the clerk of the court by the official shorthand reporter of his transcript, as provided in § 5 of this act, the party appealing shall prepare or cause to be prepared from the transcript filed by the official shorthand reporter, as provided in § 5 of this act, a statement of facts, in duplicate, which shall consist of the evidence adduced upon the trial, both oral and by deposition, stated in succinct manner and without unnecessary repetition, together with copies of such documents, sketches, maps and other matters as were used in evidence. It shall not be necessary to copy said statement of facts in the transcript of the clerk on appeal, but the same shall when agreed to by the parties and approved by the judge, or in the event of a failure of the parties to agree, and a statement of facts is prepared and certified to by the judge trying the case, be filed in duplicate with the clerk of the court, and the original thereof shall be sent up as a part of the record in the cause on appeal. Provided, however, that the official shorthand reporter shall, when requested by the party appealing, prepare from the transcript filed by the official shorthand reporter, as provided in § 5 of this act, a statement of facts in narrative form, in duplicate, and deliver the same to the party appealing, for which said statement of facts he shall be paid by the party appealing the sum of fifteen cents per folio of 100 words for the original copy, and no charge shall be made for the duplicate copy, and such amount shall not be taxed as costs in the case. (Id., § 6; Id., Art. 2070.)

**Time for Filing Statements of Facts and Bills of Exceptions.** When an appeal is taken from the judgment rendered in any district court or county court, the parties to the suit shall be entitled to, and they are hereby granted thirty days after the day of adjournment of court in which to prepare or cause to be prepared, and to file a statement of facts and bills of exceptions; and upon good cause shown the judge trying the cause may extend the time in which to file a statement of facts and bills of exception. Provided, that the court trying such cause shall have, the power in term time or vacation, upon the application of either party, for good cause, to extend the several times as hereinbefore provided for the preparation and filing of the statement of facts and bills of exception, but the same shall not be so extended so as to delay the filing of the statement of facts, together with the transcript of record, in the Appellate Court within the time prescribed by law, and when the parties fail to agree upon a statement of facts, and that duty devolves upon the court, the court shall have such time in which to do so, after the expiration of thirty days, as hereinbefore provided, as the court may deem necessary, but the court in such cases shall not postpone the preparation and filing of same, together with the transcript of the record, in the Appellate Court within the time prescribed by law. Provided if the term of said court may by law continue more than eight

weeks said statement of facts and bills of exception shall be filed within thirty days after final judgment shall be rendered unless the court shall by order entered of record in said cause extend the time for filing such statement and bills of exception. Provided, further, that when the parties fail to agree upon a statement of facts the judge shall not be required to prepare such statement of facts, unless the party appealing, by himself or attorney, within the time allowed for filing, shall present to the judge a statement of facts, and shall certify thereon over his signature that to the best of his knowledge and belief it is a full and fair statement of all the facts proven on the trial. Provided, that any statement of facts filed before the time for filing the transcript in the appellate court expires, shall be considered as having been filed within time allowed by law for filing same. (Id., § 7; Id., Art. 2073.)

**Compensation—Defendant in Criminal Case Unable to Pay—Appeal Without Bond in Civil Cases.** The official shorthand reporter shall receive a per diem compensation of five dollars for each and every day he shall be in attendance upon the court for which he is appointed, in addition to the compensation for transcript fees as provided in this act, said compensation shall be paid monthly by the Commissioners' Court of the county in which the court sits, out of the general fund of the county, upon the certificate of the district judge. Provided, however, in districts of two or more counties the official shorthand reporter shall receive a salary of \$1,500 per annum, in addition to the compensation for transcript fees as provided for in this act, to be paid monthly by the counties of the district in proportion to the number of weeks provided by law for holding court in the respective counties. Provided that in a district wherein in any county in the district the term may continue until the business is disposed of, each county shall pay in proportion to the time court is actually held in such county. Provided, that when any criminal case is appealed and the defendant is not able to pay for a transcript as provided for in § 5 of this act, or to give security therefor, he may make affidavit of such fact, and upon the making and filing of such affidavit, the court shall order the stenographer to make such transcript in duplicate, and deliver them as herein provided in civil cases, but the stenographer shall receive no pay for same, provided that should any such affidavit so made by such defendant be false he shall be prosecuted and punished as is now provided by law for making false affidavits. In any civil case where the appellant or plaintiff in error has made the proof required to appeal his case without bond, such appellant or plaintiff in error may make affidavit of such fact, and upon the making and filing of such affidavit, the court shall order the stenographer to make a transcript as provided in § 5 of this act, and deliver same as herein provided in other cases, but the stenographer shall receive no pay for same, provided that should any such affidavit so made by such appellant or plaintiff in error be false he shall be prosecuted and punished as is now provided by law for making false affidavits. (Id., § 8; Id., Arts. 1925 and 2071.)

**To Make Transcript for Parties—Compensation for.** At the request of any party to the suit it shall be the duty of the official shorthand reporter to make a transcript in typewriting of all the evidence and other proceedings, or any portion thereof, in question and answer form, as provided in § 5 of this act, which transcript shall be paid for at the rate of fifteen cents per folio of 100 words by and be the property of the person ordering the same. (Id., § 9; Id., Art. 1926.)

**Stenographer's Fee Taxed as Costs.** Hereafter the clerks of all courts having official shorthand reporters, as provided for in this act, shall tax as costs in each civil case, where an answer is filed, except suits for the col-

lection of delinquent taxes, a stenographer's fee of three dollars, which shall be paid as other costs in the case, and which shall be paid by said clerk, when collected, into the general funds of the county in which said court sits. (Id., § 10; Id., Art. 1927.)

**Appointment of Deputies—Oath and Examination.** The official shorthand reporter may, with the consent of the court, appoint one or more deputies, when necessary, to assist him in the discharge of his duties; provided, however, that before any such deputy shall enter upon the discharge of his duties as official shorthand reporter he shall subscribe to the same oath hereinbefore provided for the official shorthand reporters, and shall also be required to stand such examination as to his proficiency as may be required by the court. (Id., § 11; Id., Art. 1928.)

**Repeal of Inconsistent Acts—Parties May Prepare Statements of Facts.** That Ch. 39, page 374, Acts of the First Called Session of the Thirty-first Legislature of the State of Texas, providing for the appointment of court stenographers, prescribing their duties and regulating their charges and compensation, and all other laws or parts of laws in conflict with this act be, and the same are hereby expressly repealed; provided, however, that nothing in this act shall be so construed as to prevent parties from preparing statements of facts on appeal independent of the transcript of the notes of the official shorthand reporter. (Id., § 13; Id., Art. 2072.)

**Duties in Felony Cases—Statements of Facts and Bills of Exceptions—Transcript Fee and How Paid, in Certain Cases.** In the trial of all criminal cases in the district court in which the defendant is charged with a felony, the official shorthand reporter shall keep an accurate stenographic record of all the proceedings of such trial in like manner as is provided for in civil cases, and should an appeal be prosecuted in any judgment of conviction, whenever the State and defendant cannot agree as to the testimony of any witness, then and in such event, so much of the transcript of the official shorthand reporter's report with reference to such disputed fact or facts shall be inserted in the statement of facts as is necessary to show what the witness testified to in regard to the same, and constitute a part of the statement of facts, and the same shall apply to the preparation of bills of exception; provided, that such stenographer's report when carried into the statement of facts or bills of exception, shall be condensed so as not to contain the questions and answers except where, in the opinion of the judge, such questions and answers may be necessary in order to elucidate the fact or question involved; provided, that in all cases where the court is required to and does appoint an attorney to represent the defendant in a criminal action, that the official shorthand reporter shall be required to furnish the attorney for said defendant, if convicted, and where an appeal is prosecuted, with a transcript of his notes as provided in § 5 of this act, for which said services he shall be paid by the State of Texas, upon the certificate of the District Judge, one-half of the rate provided for herein in civil cases. (Id., § 14; Id., Art. 1933.)

**Special Stenographer Employed—Compensation.** Where there shall be no official stenographer, the court may, and upon application of either party shall, employ a competent stenographer or other person to take down the testimony in the cause for the purpose of preserving the evidence given on the trial. In such case, reasonable compensation, not to exceed twenty cents per hundred words, shall be allowed such stenographer to be fixed by the court and taxed in the bill of costs. (Vernon's Sayles' Civil Stats., 1914, Arts. 1930, 1931) (1295-1296.)

Note: This act was in force before the Act of 1903, providing for official stenographers. While not repealed by direct reference in any subsequent act,

the question whether it has been repealed by implication in the various subsequent acts has not been passed upon by the Supreme Court.

### COUNTY COURTS.

**Appointment in Civil Cases—Oath—Other Provisions Applicable.** Whenever either party to a civil case pending in the county court shall apply therefor, the judge of the court shall appoint a competent stenographer to report the oral testimony given in such case, provided there is a competent stenographer present. Such stenographer shall take the oath herein prescribed, and shall receive compensation of to be not less than \$5.00 per day, which shall be taxed and collected as costs; in such cases the provisions of this act with respect to the preparation of the statement of facts, the time to be allowed therefor, and for the presentation to the opposite party, and the approving and filing thereof by the court, shall apply to all statements of facts in civil causes tried in the county court, and all provisions of law governing statements of facts and bills of exceptions to be filed in district courts and the use of same on appeal shall apply to civil causes tried in the county courts. (Acts of 1911, p. 264, § 12; Vernon's Sayles' Civil Stats., 1914, Art. 1932.)

**STATEMENT OF FACTS.** (Rules of the Supreme Court of Texas, 1912.)

**Where the Fact is Established.** Where the evidence adduced upon the trial of a cause is sufficient to establish a fact or facts alleged by either party, the testimony of witnesses, and the deeds, wills, records or other written instruments, admitted as evidence, relating thereto, should not be stated or copied in detail into a statement of facts, but the facts thus established should be stated as facts proved in the case; provided, an instrument, such as a note or other contract, mortgage or deed of trust that constitutes the cause of action on which the petition or answer or cross bill or intervention is founded may be copied once in the statement of facts. (Rule 72. See Vol. 142, S. W. Rep., pp. xxii and xxiii.)

**Where Fact is Disputed.** When there is any reasonable doubt of the sufficiency of the evidence to constitute proof of any one fact under the preceding rule there may then be inserted such of the testimony of the witnesses and written instruments, or parts thereof, as relate to such facts. (Rule 73.)

**When Instruments Copied.** When it becomes necessary to insert in a statement of facts any instrument in writing, the same shall be copied into the statement of facts before it is signed by the judge, and instruments therein only referred to and directed to be copied shall not be deemed a part of the record. (Rule 74.)

**Instruments Not Disputed.** Where there is no dispute about, or question made upon, the validity or correctness in the form of a deed, or its record, a will or its probate, record of a court, or any written instrument adduced in evidence, it should be described (and not copied) or its legal effect as evidence stated, as a fact established. (Rule 75.)

**Instruments Disputed.** When questions are raised on such instruments as are mentioned in the preceding rules, only so much or such parts of them shall be copied into the statement of facts as may be necessary to present the question, and the balance of them shall only be described, or presented as described in the preceding rule. (Rule 76.)

**Formal Parts of Depositions Not Copied.** The commissions, notices and interrogatories in depositions adduced in evidence shall in no case be inserted or copied into a statement of facts, but the evidence thus taken and

admitted shall appear in the statement of facts in the same manner as though the witness had been on the stand in giving his evidence, and not otherwise, in form or substance. (Rule 77.)

**Transcript of Shorthand Notes Not Copied.** Neither the notes of a stenographer taken upon the trial, nor a copy thereof made at length, shall be filed as a statement of facts, but the statement made therefrom shall be condensed throughout in accordance with the spirit of the foregoing rules upon this subject. (Rule 78.)

## UNITED STATES

### COURTS OF EQUITY.

**Appointment—Fees.** When deemed necessary by the court or officer taking testimony, a stenographer may be appointed who shall take down testimony in shorthand and, if required, transcribe the same. His fee shall be fixed by the court and taxed ultimately as costs. The expense of taking a deposition, or the cost of a transcript, shall be advanced by the party calling the witness or ordering the transcript. (Rule 50, Rules of Practice, in force Feb. 1, 1913.)

### REFEREES IN BANKRUPTCY.

**Appointment—Compensation.** Referees are invested with jurisdiction, upon the application of the trustee, during the examination of the bankrupt or other proceedings, to authorize the appointment of stenographers at the expense of the estate at a compensation not to exceed ten cents per folio for reporting and transcribing the proceedings. (Bankruptcy Act of 1898, § 38, Subd. 5.)

### COURT OF CUSTOMS APPEALS.

**Appointment—Compensation—Duties.** The court may appoint one stenographic reporter at a salary of two thousand five hundred dollars per annum, payable in equal monthly installments, who shall hold his office during the pleasure of and perform such duties as are assigned to him by the court. Said reporter shall prepare and transmit to the Secretary of the Treasury once a week in time for publication in the Treasury Decisions copies of all decisions rendered to that date by said court, and prepare and transmit, under the direction of said court, at least once a year, reports of said decisions rendered to that date, constituting a volume. (Judicial Code, § 192; Act of March 3, 1911, c. 231.)



# UTAH

## DISTRICT COURTS.

**Appointment by Contract.** The judge of a district court may employ and contract with a stenographer to report the proceedings of such court, in the manner and under the limitations hereinafter provided. In districts where there are two or more judges, each judge thereof may employ and contract with a stenographer. (Comp. Laws 1907, § 721; Sess. Laws 1899.)

**Contract—What to Contain—Duties—Transcripts—Compensation—Term—Mileage.** The judge of such district court may make a written contract with a competent person qualified to report stenographically the proceedings of the court. Said contract shall expressly provide that the stenographer shall attend all sittings of the court, when ordered to do so by the judge thereof, take full stenographic notes of the testimony and of all proceedings given or had thereat, except when the judge dispenses with his services in a particular cause, or with respect to a portion of the proceedings thereof; that the stenographer shall file with the clerk forthwith the original stenographic notes taken at the trial or hearing so required to be taken; that all objections made to the rulings, decisions and opinions of the court, and the exceptions taken during the trial or hearing, shall be written out at length, or typewritten by the stenographer, and filed with the clerk forthwith after the close of the trial or hearing, if required by either party to the action; that the stenographer shall furnish upon request, with all reasonable diligence, to the defendant in a criminal cause, or a party or his attorney in a civil cause, in which he has attended the trial or hearing, a copy written out at length from his stenographic notes of the testimony and proceedings, or a part thereof, upon the trial or hearing, upon payment by the person requiring the same, of such fees as shall be provided in said contract. Such contract shall expressly provide that the compensation of such stenographer shall be at a certain rate per day, for attendance at each sitting of the court, which shall not exceed the sum of \$8, and for the compensation of such stenographer for transcribing into longhand or typewriting, his stenographic notes of the testimony and proceedings, or a part thereof, shall not exceed the sum of twelve cents per folio, and not to exceed four cents per folio for additional copies when furnished to the same party ordering the original, not exceeding two such additional copies. Such contract shall further provide that the said stenographer shall hold his employment at the pleasure of the judge of the court appointing him, or his successor, and may also provide that said stenographer shall be paid not to exceed ten cents per mile for each mile actually traveled by him in the performance of his part of said contract: Provided, that no mileage shall be paid where free transportation is used, and the amount of such mileage shall be certified by the court to the state auditor, who shall draw his warrant upon the state treasurer for the amount so certified, and the same shall be paid out of the state treasury. Such contract may contain such other stipulations and conditions as may be agreed upon by the said judge and the said stenographer. (Sess. Laws 1911, amending Comp. Laws 1907, § 722.)

**Assistants.** The stenographer may, when necessary, with the consent of the court, employ an assistant, who shall receive the same compensation as the stenographer, and whose minutes, transcripts and certificates shall have the same force and effect as though made by the official stenographer. (Comp. Laws, 1907, § 723, p. 377; Sess. Laws 1899.)

**Transcript as Bill of Exceptions.** The objections and exceptions to the rulings, decisions and opinions of the court, which shall be written out by

the stenographer and filed with the clerk, as provided in said contract, may be settled thereafter in a bill of exceptions. (Id., § 724, p. 377; Sess. Laws 1899.)

**Prima Facie Evidence.** The report of the stenographer so employed when written out in longhand or typewriting, and certified by him as being a correct transcript of the testimony and proceedings in the case is prima facie a correct statement of such testimony and proceedings. (Id., § 725, p. 377; Sess. Laws 1899.)

**Bond.** Before any stenographer so employed shall enter upon the discharge of his duties, under the said contract, he shall give a bond with sufficient surety, conditioned for the faithful performance of said contract, in the sum of \$2,500, or such further sum as the judge shall fix. Said bond shall run to the judge in his official capacity, but an action thereon may be maintained by any person whose rights are affected by the failure of the stenographer to perform any condition of the said contract. (Id., § 726, p. 377; Sess. Laws 1899.)

**Payment for Transcripts—Taxation as Costs—Where Defendant Impecunious.** In cases where a transcript has been ordered by the court, the fees for transcribing must be paid by the respective parties to the action or proceedings in equal proportion, or by such of them and in such proportion as the court in its discretion may order. In no case shall a transcript be taxed as costs unless ordered either by the plaintiff or defendant or by the court; nor shall the stenographer be required in any civil case to transcribe his notes until the fees therefor be tendered him, or a sufficient amount to cover the same be deposited in court for that purpose. The party ordering the stenographer to transcribe any portion of the testimony or proceedings must pay the fees to the stenographer therefor. If the defendant in a criminal case desires to have the stenographer transcribe his notes taken on the trial, he must pay the stenographer's fees therefor, or deposit a sum equivalent thereto with the clerk of the court therefor, or the court must refuse to order the stenographer to transcribe his notes; provided, that if it appears by affidavit, made by the defendant in person, that said defendant is impecunious and unable to pay the stenographer's fee for transcribing his notes, and that a transcript of the same is necessary in perfecting an appeal on behalf of the defendant, and said facts are not successfully controverted by the county attorney or by affidavit of some person cognizant of the facts, the court may issue an order directing that the stenographer transcribe his notes taken on the trial of the defendant, or so much thereof as the court may deem necessary, at the cost of the state. In criminal cases, where the proceedings have been taken down or transcribed upon the order of the court, the fees of the stenographer shall be certified by the court to the state auditor, who shall draw his warrant upon the state treasurer for the amount so certified, and the same shall be paid out of the state treasury. (Id. § 727, p. 377; Sess. Laws 1899.)

**Manner of Payment for Attendance.** The judge of said court shall certify, when requested by the stenographer, the time which he shall have been employed in attendance upon the court, except on the trial of criminal cases, and the amount to which he is entitled therefor. Upon presentation of such certificate of the judge to the county auditor, said auditor shall draw a warrant in favor of said stenographer upon the county treasurer for the amount so certified, which warrant shall be a sufficient voucher for the payment of the same by the county treasurer. (Id., § 728; Sess. Laws 1899.)

**Fee for Stenographer Collected by Clerk.** A stenographer's fee of three dollars shall be collected by the clerk of the court, in each case, upon the

filing of said case, which shall be paid to the county treasurer, by the clerk, and may be taxed as costs in the action; provided, that no stenographer's fee shall be charged or collected in probate matters unless the same be contested, and then the fees shall be paid by the party contesting; provided, that in all actions now pending the clerk of the court shall at once collect the fee as herein provided; and provided, further, that in no case shall the state be liable for such fee. (Id., § 728x; Sess. Laws 1899.)

**Exemption of Judge, Etc., from Liability.** Neither the judge employing and contracting with such stenographer, nor the state nor any department thereof, shall be liable to the stenographer for any compensation, fee or mileage, except as provided herein. (Id., § 728x1; Sess. Laws 1899.)

#### CITY COURT.

**When Stenographer May Be Employed.** Any judge of the city court in cities of the first class may employ and contract with a competent stenographer to report the proceedings in any civil case in such court, where the amount involved in controversy exceeds the sum of \$100, and upon request of either party to such action. (Laws 1907, p. 83.)

**Compensation.** The amount to be paid such stenographer shall not exceed six dollars per day for actual services rendered in reporting, and he shall be allowed to charge eight cents per folio for a transcript of his notes. The per diem shall be paid out of the city treasury. (Id., p. 83.)

**Fee for Stenographer Collected by Clerk.** The party requesting the reporter's services shall pay to the clerk the sum of \$3 as reporter's fees, and the same shall be taxed as costs in the action. (Id., p. 83.)

#### SUPREME COURT.

**Appointment—Compensation.** The Supreme Court is permitted to employ a stenographer at a salary of \$1800 per annum. (Comp. Laws 1907, § 666, as amended by Laws of 1909.)

#### UNITED STATES DISTRICT COURT.

**Compensation.** An order has been made by the United States judge in the District of Utah, appointing a stenographer in equity cases. The successful party may tax up \$10 per diem for each full day's attendance. The transcript fee has been fixed by the court at 15 cents per folio for the original, and five cents per folio for each copy. The same transcript rate has been fixed for transcripts of evidence taken before the Standing Examiner in Chancery.

#### JUVENILE COURTS.

**Appointment—Compensation—Duties.** In all proceedings before the juvenile court, where the rights of the parents, parent, custodian, or guardian are asserted for determination, a stenographic report of the proceedings shall be kept and preserved. A reporter shall be provided by the juvenile court commission for juvenile courts, who shall be paid at the rate of not to exceed \$5 per day while actually on duty. Otherwise the provisions of law relating to stenographers in district courts shall govern stenographers in juvenile courts. (Comp. Laws of 1907, § 720x13; Laws of 1907, p. 211.)

#### CORONER'S INQUESTS.

**Appointment—Compensation.** The justice shall have the testimony given by the witnesses reduced to writing under his directions, and may

employ a stenographer for such purpose at the same relative compensation as is now allowed to stenographers in the district courts of this state, and when such testimony shall have been taken down by the stenographer, a transcript thereof, duly certified, shall constitute the deposition of such witness. (Rev. St. 1888, § 1230; Comp. L. 1907, § 1230.)

#### TESTIMONY OF DECEASED, ETC. WITNESSES.

**Transcript of, Read in Evidence.** Whenever in any court of record the testimony of any witness in any case shall be stenographically reported by an official court reporter, and thereafter said witness shall die, or be beyond the jurisdiction of the court in which the case is pending, either party to the record may read in evidence the testimony of said witness, when duly certified by the stenographer to be correct, in any subsequent trial of, or proceeding had, in the same cause, subject only to the same objections that might be made if said witness were upon the stand and testifying in open court. (Rev. Stat. 1898, § 3475.)

#### PRELIMINARY EXAMINATIONS.

**Appointment—Transcript Prima Facie Evidence—Duties—Compensation.** The testimony of each witness in cases of homicide must be reduced to writing as a deposition, by the magistrate, or under his direction; and in other cases upon the demand of the prosecuting attorney. The magistrate before whom the examination shall be had may, with the consent of the county attorney, order the testimony and proceedings to be taken down in shorthand, in all examinations herein mentioned, and for that purpose he may appoint a stenographer . . . . When taken down in shorthand, the transcript of the stenographer appointed as aforesaid, when written out in longhand, and certified as being a correct statement of such testimony and proceedings in the case, shall be prima facie a correct statement of such testimony and proceedings. The stenographer shall, if the defendant is held to answer the charge, within ten days after the close of such examination, transcribe his said shorthand notes into longhand, and certify and file the same with the clerk of the district court of the county in which the defendant shall have been examined, and shall in all cases file his original notes with said clerk. The stenographer's fees shall be paid out of the treasury of the county. (Rev. Stat. 1898, § 4670.)

**Use of Transcript When Attendance of Witness Cannot Be Had.** The testimony of a witness may be taken on the part of the state and used upon the trial of a defendant, provided the witness is dead, insane or out of the jurisdiction of the court. (Comp. Laws 1907, § 4685x1, p. 196.)

#### BILLS OF EXCEPTIONS.

**What May be Contained.** The stenographer's notes of the evidence may be stated. (Comp. Laws 1907, § 3284; Sess. Laws of 1903, p. 33.)

#### COSTS ON APPEAL ALLOWED.

**Transcripts Included In.** The costs to be awarded to a party as provided in this and the preceding sections shall include . . . and the cost of transcribing the stenographer's notes or minutes of the trial or hearing. (Comp. Laws 1907, § 3351.)

#### IRRIGATION AND WATER RIGHTS.

**All Testimony to be Stenographically Reported.** All the testimony taken by any referee or referees shall be stenographically reported, and the same, together with all other evidence in the matter, shall be transmitted to, preserved, and filed in the office of the clerk of said district court, with

the report of such referee or referees. (Sess. Laws 1903, p. 93; Sess. Laws 1905, p. 150.)

**Compensation, How Paid.** The fees of referees and stenographers shall be fixed by the court, and, together with any other expenses not herein provided for that may be incurred in carrying out the provisions of this title, shall be paid out of the state treasury, upon certificates from the proper district judge to the state auditor of the amount due each person for such service. (Comp. Laws 1907, § 1288x39.)

#### DEFINITION OF FOLIO.

The term "folio" when used as a measure for computing fees, shall be construed to mean one hundred words, counting every number expressed in numerals as a word; provided, that in computing fees to be charged by the county recorder for recording any plat or map, the word "folio" shall be construed to mean one hundred numbers, letters or characters. Any portion of a folio, when in the whole draft or paper there shall not be a complete folio, or when there shall be an excess over the last folio exceeding one-half, shall be computed as a folio. (Comp. Laws 1907, § 1022, p. 468.)

#### GRAND JURIES.

Note: In the acts regarding grand juries and the persons who may be present during sessions, stenographers are omitted. An application was made in 1908 to the U. S. District Judge to have a stenographer present to take testimony in certain U. S. cases, and this application was denied, upon the ground that no statute of the United States permitted it, and it was not authorized by common law.

# VERMONT

## COUNTY AND CHANCERY COURTS.

**Appointment.** The presiding judge of each county court, and the chancellor of the court of chancery in each county may each, in his discretion, appoint and employ a stenographic reporter, to make a verbatim report of the proceedings of either of said courts, at any term thereof, or in vacation; and of such proceedings in hearings before auditors, referees, commissioners and masters in chancery, as either such presiding judge or chancellor may order to be reported, for the use and convenience of said courts and the parties having business therein. (Stats. 1906, § 1367, as amended by laws of 1908, p. 59.)

**Removal—Punishable for Contempt.** The judge or chancellor may discharge such reporter at any time, and shall have power at all times to make such orders against the reporter as may be necessary to compel the performance of the duties imposed upon him by the five following sections, and, on motion of a party aggrieved, may proceed against such reporter for contempt. (Id., § 1368.)

**Duties in Certain Criminal Cases.** In criminal trials where the penalty is death or imprisonment in the state prison for ten years or more, the presiding judge may, in his discretion, procure a stenographic reporter to take down the proceedings, and cause all or any part of the same to be written out as the circumstances may require; and, in case of conviction, they shall be written out in full. In case of the decease of such judge, any judge of the supreme court may approve the account of a stenographic reporter ordered by such deceased judge to write out such proceedings. (Id., § 1369.)

**Oath.** Said reporter shall be sworn before entering upon his duties, and shall be responsible for the correctness of his reports and certified copies thereof made by him or under his direction. (Id., § 1370.)

**Filing of Transcripts.** Said reporter shall, within twenty days from the rising of the county court, file with the clerk thereof certified copies of the evidence and proceedings in all causes directed by the presiding judge of such court. Such copies shall be verbatim transcripts of the evidence and proceedings and be a part of the files of such court. (Id., § 1371.)

**Transcripts for Referees, Etc.** Said reporter shall furnish a verbatim and certified transcript of the evidence and proceedings in every hearing reported by him, under the order of either the presiding judge or chancellor, to an auditor, referee, commissioner or master in chancery, within twenty days after the termination of such hearing. (Id., § 1372.)

**Transcripts for Parties—Compensation for.** Said reporter shall, within twenty days from the time of receiving a request therefor, furnish a verbatim and certified transcript of the evidence and proceedings in every trial and hearing reported by him to any party in interest. If only one copy is ordered by all the parties, he shall receive five cents per folio for the same, but if more than one copy is ordered by all the parties, he shall receive five cents per folio for the first copy, and two and one-half cents per folio for each manifold copy, and in cases appealed or passing to higher courts on exceptions, the appealing or excepting party shall have the first copy. Whenever such transcript is ordered by any party, said reporter shall notify the other parties thereof before he makes such transcript, and give them a reasonable time to order copies thereof. (Id., § 1373, as amended by laws of 1908, p. 62.)

**Transcripts as Evidence.** All transcripts of evidence or proceedings in a cause or hearing tried in either of such courts, or before an auditor, referee, commissioner or master in chancery, ordered to be reported by the presiding judge or chancellor, and made by or under the direction of said reporter, and duly certified by him to be a verbatim transcript of his verbatim stenographic notes of such evidence or proceedings, shall be received as evidence in any action, civil or criminal, when relevant thereto. (Id., § 1374.)

**Compensation.** The presiding judge or chancellor shall audit and allow the accounts of said reporter, and the county clerk shall thereupon pay the same out of the funds in his hands provided for the payment of court expenses. (Id., § 1375.)

#### MUNICIPAL COURTS.

**Appointment—Compensation.** Each judge shall have the same power as to the appointment of a stenographic reporter as is given to the presiding judges of the county court, and such reporter shall receive not to exceed \$4 a day and actual expenses, to be approved by the judge making the appointment, for each day actually spent in the reporting of causes. (Laws 1915, No. 91, § 19.)

## VIRGINIA

There are no statutory provisions in this state in regard to official court stenographers.

## WASHINGTON

### SUPERIOR COURTS.\*

**Appointment—Qualifications—Term—Oath—Bond.** It shall be the duty of each superior court judge in counties or judicial districts in the state of Washington having a population of over thirty thousand inhabitants to appoint a stenographer to be attached to the court holden by him, (except, for the sake of economy, where in counties or judicial districts having more than one judge there is not sufficient trial work to require the services of two or more official reporters, the judges of such courts may, provided their trial dockets can be satisfactorily arranged so as not to delay the trial of cases, appoint one official reporter jointly to act as official reporter for their respective courts,) who shall have had at least three years' experience as a skilled, practical court reporter, or who upon examination shall be able to report and transcribe accurately one hundred and fifty words per minute of the judge's charge or one hundred seventy-five words of testimony for five consecutive minutes; said test of efficiency in the event of inability to meet the qualifications as to length of time of experience, to be given by a committee of three of the attorneys of the county or district in which the said stenographer is seeking to act as official reporter, and such stenographer shall thereupon become an officer of the court and shall be designated and known as the official reporter for the court or district for which he is appointed. Each official reporter so appointed shall hold office during the term of office of the judge appointing him, but may be removed for incompetency, misconduct or neglect of duty, and before entering upon the discharge of his duties shall take an oath to perform faithfully the duties of his office and file a bond in the sum of two thousand dollars for the faithful discharge of his duties. No person shall be appointed to the office of official reporter who is not a citizen of and a duly qualified elector in the state of Washington. (Laws of 1913, Chap. 126, p. 386, et seq.; 3 Rem. & Bal. Code § 42-1 et seq.)

**Duties.** It shall be the duty of each official reporter appointed under this act to attend every term of the superior court in the county or judicial district for which he is appointed, at such times as the presiding judge may direct; and upon the trial of any cause in any court, if either party to the suit or action or his attorney, request the services of the official reporter, the presiding judge shall grant such request, or upon his own motion such presiding judge may order a full report of the testimony, exceptions taken, and all other oral proceedings; in which case the official reporter shall cause accurate shorthand notes of the oral testimony, exceptions taken, and other oral proceedings had, to be taken, except when the judge and attorneys dispense with his services with respect to any portion of the proceedings

\*This act, passed in 1913, was held constitutional by the Supreme Court in April, 1914, in the case of *State ex rel Lindsey v. Derbyshire*, 79 Wash. 227, 140 Pac. 540.



therein, which notes shall be filed in the office of the clerk of the superior court where such trial is had. (Id.)

**Compensation.** Each official reporter so appointed shall be paid a compensation at the rate of ten dollars per diem for every day he is actually in attendance upon said court pursuant to the direction of the court, which compensation shall be paid out of the county treasury where such court is held, as other expenses of the court are paid; and the sworn statement of the official reporter as to the number of days attendance upon the court, when certified as correct by the judge presiding, shall be a sufficient voucher to the county auditor upon which he shall draw his warrant upon the treasurer of the county in favor of the official reporter. (Id.)

**Stenographer's Costs, Taxation of.** In each civil action hereafter commenced the sum of one dollar shall be paid by the plaintiff at the time of the filing of the complaint to the clerk of the court, and at the time of the appearance of the defendant, or any defendant appearing separately, there shall be paid in to the clerk of the court one dollar, and these sums so paid shall be taxed as costs in the case, and collected from the unsuccessful party in said action, and shall be known as stenographer's costs, and shall be paid by the clerk of said court into the county treasury of the county in which said action is commenced. (Id.)

**Transcripts, Fee for.** When shorthand notes have been taken in any cause as in this act provided, if the court or either party to the suit or action or his attorney, requests a transcript of the notes into longhand, the official reporter shall make, or cause to be made, with reasonable diligence, full and accurate typewritten transcript of the testimony and other proceedings, which shall, when certified to, as hereinafter provided, be filed with the clerk of the court where such trial is had for the use of the court or parties to the action. The fees of the reporter for making such transcript shall be fifteen cents per folio of one hundred words for the original copy and five cents per folio for each carbon copy ordered before the original is made, or made at the same time as the original, and when such transcript is ordered by any party to any such suit or action, said fees shall be paid forthwith by the party ordering the same, and in all cases where a transcript is made as provided for under the provisions of this act the cost thereof shall be taxable as costs in the case, and shall be so taxed as other costs in the case are taxed; provided, that when the defendant in any criminal cause shall present to the judge presiding satisfactory proof by affidavit or otherwise, that he is unable to pay for such transcript, the presiding judge, if in his opinion justice will thereby be promoted, may order said transcript to be made by the official reporter, in which case the official reporter shall be paid for preparing said transcript ten cents per folio for the original copy and five cents per folio for each carbon copy ordered at the same time as the original or made at the same time as the original, which transcript fee shall be paid in like manner as the per diem fees are paid as specified in § 3 of this act. (Id.)

**Transcript Prima Facie Evidence.** The report of the official reporter when transcribed and certified to as being a correct transcript of the stenographic notes of the testimony, or other oral proceedings had in the matter, shall be prima facie a correct statement of such testimony or other oral proceedings had, and the same may thereafter in any civil cause be read in evidence as competent testimony when satisfactory proof is offered to the judge presiding that the witness originally giving such testimony is then dead or without the jurisdiction of the court, subject, however, to all objec-

tions the same as though such witness were present and giving such testimony in person. (Id.)

**Transcripts When Reporter Has Ceased to be Official.** When the official reporter who has taken any notes in any cause shall thereafter cease to be such official reporter, any transcript thereafter made by him therefrom, or made by any competent person under the direction of the court and duly certified to by the person making the same under oath as a full, true and correct transcript of said notes, the same shall have full force and effect the same as though certified by an official reporter of said court. (Id.)

**Reporter Pro Tem.—Qualifications—Oath—Bond—Compensation.** In the event of the absence or inability of the official reporter to act, the presiding judge may appoint a competent stenographer to act pro tem., who shall perform the same duties as the official reporter, and whose report when certified to shall have the same legal effect as the certified report of the official reporter. The reporter pro tem. shall possess the qualifications and take the oath prescribed for the official reporter, and shall file a like bond, and shall receive the same compensation. (Id.)

**To Act as Amanuensis in Certain Counties—Compensation for.** In all counties or judicial districts, except counties of the first class, such official reporter shall act as amanuensis to the court where he is appointed and the court may allow him per diem therefor, as provided in this act; provided, That in no event shall the per diem for such work exceed ten days in any one calendar month. (Id.)

**May Withdraw Files and Exhibits Upon Receipting Therefor.** Official reporters or reporters pro tem. may, without order of court, upon giving a proper receipt therefor, procure at all reasonable hours from the office of the clerk of the court, any files or exhibits necessary for use in the preparation of statements of fact or transcribing portions of testimony or proceedings in any cause reported by them. (Id.)

**Supplies, When Furnished.** Necessary supplies for reporting and for the preparation of transcripts in criminal cases shall be furnished by the county. Typewriters and all other supplies in all other cases shall be furnished by the stenographers. In counties where arrangements can be made therefor, suitable office room shall be furnished the official reporter. (Id.)

**Substitution of Reporters—Expenses Paid.** At the request of either party to an action an official reporter from the same or any other district in the state may be substituted for the official reporter of the court in which the action is being tried for the purpose of reporting the trial of said action; provided, that the party or parties to the action requesting such substitution pay or secure to be paid to the clerk of the court the necessary traveling and hotel expenses of the official reporters so substituted as aforesaid. (Id.)

**Exception as to Certain Counties.** This act shall not apply to any county having a population of two hundred thousand or over. (Id.)

Note: This exception, at present, applies only to King county (Seattle).

**Former Testimony May be Read.** The testimony of any witness, deceased, or out of the state, or for any other sufficient cause unable to appear and testify, given in a former action or proceeding, or in a former trial of the same cause or proceeding, when reported by a stenographer or reduced to writing, and certified by the trial judge, upon three days' notice to the opposite party or parties, together with service of a copy of the testimony proposed to be used, may be given in evidence on the trial of any civil action or proceeding, where it is between the same parties and relates to the same matter. (Rem. & Bal. Code, § 1247.)

# WEST VIRGINIA

## CIRCUIT COURTS.

**Appointment—Compensation.** The judges of circuit courts and of courts of limited jurisdiction may at their discretion employ shorthand reporters to report, under such regulations as the judges may prescribe, the proceedings had, and the testimony given, during the trial of any cause in said courts, and may allow them a reasonable compensation for their services and expenses. (Code, 1913, § 4624; Acts 1870, c. 90; 1881, c. 94; 1887, c. 20; 1893, c. 40.)

**Payment of Compensation.** Such compensation and expenses in felony cases shall be paid by the auditor out of the state treasury; upon a certified order of the judge of the court in which the service was rendered; and such compensation and expenses in misdemeanor cases shall be paid out of the county treasury of the county in which the service was rendered, upon a certified order of the judge presiding in the court in which the service was rendered; and in case of conviction in misdemeanor cases the compensation to such reporter shall be taxed in the costs against the defendant, and if collected repaid into the county treasury. The expenses of reporting any civil case shall be paid equally by the parties to the cause, but the expense so paid by the prevailing party shall be taxed as part of the costs recovered. (Id., § 4625; Acts 1887, c. 20; 1893, c. 40.)

**Qualifications—Oath—Duties—Notes as Authority.** Any shorthand reporter so appointed, shall be competent in the practice of his art, and shall be duly qualified under oath; it shall be his duty to take full shorthand notes of the testimony in any case in which his services may be required, and such notes shall be deemed and held to be official, and the best authority in any matter of dispute, and a copy of the same made as hereinafter provided, shall be used by the parties to the cause in any further proceedings, wherein the use of the same may be required. (Id., § 4626; Acts 1887, c. 20.)

**Transcripts—Compensation.** It shall be the duty of said shorthand reporter to furnish a copy of the notes of testimony, written out in longhand, upon the request of the judge without extra charge, and in case either party to the cause shall request or require a transcript of the said notes, the stenographer shall furnish the same in longhand, and shall be entitled to be paid therefor the sum of twenty cents per each hundred words so transcribed. (Id., § 4627; Acts 1887, c. 20.)

**Local Acts.** Local acts for the following circuits have been passed:

Circuit	Per Diem	Date of Act	Code 1913
2, 3 and 4	Fixed by judge	1901, c. 27-1	§ 4629
3	"	1905, c. 83-1	4630
4*	"	1915, c. 139	
7	\$7.50 and expenses	1915, c. 121	
13	Fixed by judge	1915, c. 130	
19	"	1915, c. 114	
23	"	1913, c. 48	4631-7

\*Judge of Fourth circuit authorized to employ one stenographer to assist him in clerical work required by official duties, at not to exceed \$100 per month, payable monthly by the counties of the circuit pro rata.

## DEPOSITIONS.

**May be Taken in Shorthand.** In any pending case the deposition of a witness, whether a party to the suit or not, may without commission, be taken in or out of this state by a justice or notary public, or by a commissioner in chancery, or before any officer authorized to take depositions in

the county or state where they may be taken; and such depositions may be taken in shorthand, or stenographic characters or notes, and shall be written out in full and transcribed into the English language by the stenographer taking the same, and certified by the officer before whom the depositions are taken; and if certified by such officer under his hand and if further certified by him that such stenographic characters and notes were correctly taken and accurately transcribed by him, or under his direction and supervision, and that the witnesses were duly sworn, such depositions may be received and read in evidence without proof of the signature to such certificate, and, without the signature of the witness to such depositions; and in case the stenographer taking the said depositions is not the officer before whom the same is being taken, then such stenographer before proceeding to take any of said depositions, shall be sworn to take correctly and accurately transcribe the same, and the certificate of the officer before whom the depositions are taken shall state that the stenographer was so sworn. (Id., § 4890; Acts 1909, Ch. 44.)

#### PUBLIC SERVICE COMMISSION.

**Hearings Before Special Examiner.** In any pending case after issue joined by answer or on default of answer, the Commission may appoint a special examiner to take the testimony of witnesses to be examined orally before such examiner, upon questions and answers to be there propounded to the witness and subject to cross examination. Objections to the evidence taken before a special examiner shall be in short form and shall not include argument or debate. Such testimony may be taken in shorthand and transcribed by any competent stenographer, duly sworn to correctly and truthfully take such evidence and to transcribe his notes into longhand. In such case the witnesses need not sign their depositions. The Commission may require payment by the offending party of the costs of incompetent, immaterial or irrelevant depositions, or such parts of them, as may be just. Notice shall be given by the special examiner or the respective parties, or their attorneys, to the opposite party, of the time and place of examination, before such special examiner, for such reasonable time as the Commission may fix by order in each case. (Rule 25, adopted June 17, 1913.)

**Stenographer Appointed.** When deemed necessary by the Commission, or by any special examiner or other officer taking testimony, a stenographer may be appointed who shall take down the testimony in shorthand and, if required, transcribe the same, such stenographer having been first duly sworn according to law. His fee in each case shall be fixed by the Commission and taxed ultimately to costs. The expense of taking a deposition, or the cost of a transcript of evidence shall be advanced by the party calling the witness or ordering the transcript. (Rule 26, adopted June 17, 1913.)

# WISCONSIN

## CIRCUIT COURTS.

**Appointment of Reporter and Assistants—Oaths—Duties.** Every circuit court judge may, in his discretion, appoint a competent phonographic reporter for the circuit or the branch of a circuit, as the case may be, for which he was elected or appointed; and when he shall deem it necessary he may appoint one or more competent assistant reporters. The appointing judge or his successor may remove any such reporter or assistant reporter at pleasure and appoint a successor. Every person so appointed as reporter or assistant reporter is an officer of the court and before entering upon the duties of his office shall take and subscribe the constitutional oath, and file the same, duly certified, in the office of the secretary of state. When so qualified every reporter and every assistant reporter shall be authorized to act in any circuit court in the state. Every reporter and every assistant reporter shall attend upon the terms of court in the circuit or branch for which he is appointed whenever requested so to do by the circuit judge, and shall discharge such duties as the court or judge thereof requires. (Ch. 113, § 18, Stats. 1913; R. S. 1878, s. 2437; Ann. Stats. 1889, s. 2437; Stats. 1898, s. 2437; 1907 c. 485; 1913, c. 592.)

**Compensation** Every reporter appointed pursuant to § 113.18 shall be compensated for his services at the rate of two hundred dollars per month, payable out of the state treasury. Every reporter so appointed in a circuit divided into two or more branches shall be further compensated for his services at the rate of fifty dollars per month, payable out of the treasury of the county embracing such circuit. Every reporter attending a term of court, or attending by direction of the court the trial of a compulsory reference, outside of the county in which he resides shall be reimbursed out of the state treasury his necessary traveling expenses and hotel bills. Assistant reporters shall be paid nothing out of any public treasury except for services performed in a county forming a part only of a circuit when two judges are holding court therein at the same time; and for such services each assistant reporter shall be compensated at the rate of ten dollars per day, payable out of the state treasury. For other services he shall be compensated by the reporter. Payments authorized by this section shall be made upon affidavit of the reporter and the certificate of the judge with whom the service shall have been performed, showing performance and filed, in case of payments to be made out of the state treasury, with the secretary of state, and in case of payments to be made out of any county treasury, with the county clerk of such county. Claims against the state arising under this section shall be charged to the appropriation for circuit courts. (Id., § 19; R. S. 1878, s. 2438; 1889, c. 128; Ann. Stats. 1889, s. 2438; 1895, c. 36; Stats. 1898, s. 2438; 1907, c. 485; 1913, c. 592; 1915, c. 240.)

**Transcripts—Compensation for—Attendance before Referee.** Every reporter shall, upon the request of a party to any action, transcribe in long-hand the evidence or any other proceedings taken by him in such action or any part thereof so requested, duly certified by him to be correct transcript thereof, for which he shall be entitled to receive from the party requesting the same five cents per folio when written out in full. In the trial of any criminal action or proceedings the court may, in its discretion, and, in case of commitment to any state penal or reformatory institution, or to a house of correction in counties having and maintaining same, shall order such transcript of the evidence and proceedings to be made and certified by the reporter and filed with the clerk of the court, and a certified

duplicate of such transcript to be filed with the warden or superintendent of the institution to which the person may be sentenced, and the cost thereof, not exceeding five cents per folio for the original transcript and two and one-half cents per folio for the duplicate, shall be certified and paid by the county treasurer upon the certificate of the clerk of the court. In case of application for a pardon or commutation of sentence said duplicate transcript shall accompany the application as the minutes of testimony provided for in § 4858 of the statutes. In all actions in which any circuit court shall order a compulsory reference the court may direct the reporter thereof to attend the trial of such action, take the evidence and proceedings therein and furnish the referee or referees with a transcript thereof in longhand, when the court shall so order. Such reporter shall receive the same fees for such transcript of testimony, paid in the same manner as hereinbefore provided. Id., § 20. (Stats. 1898, s. 2439; 1913 c. 484, 592.)

**To Take Remarks of Judge.** The judge shall require the phonographic reporter to take down all that he may say during any trial to the jury or to counsel in their presence of or concerning such case. (§ 2853, St. 1913.)

**Transcripts as Evidence.** A transcribed copy of the minutes of evidence and proceedings or of any specific part thereof on the trial of an action or proceeding, taken by the official phonographic reporter of the court, being certified by such reporter to be a true and correct transcription in longhand of all the testimony on the trial, or of a particular witness, or of any other specific part thereof, carefully compared by him with his original notes and to be a correct statement of the evidence and proceedings had on such trial so purporting to be taken and transcribed, shall be received in evidence with the same effect as if such reporter were present and testified to the facts so certified. (§ 4141, St. 1913.)

**Shall Not Take Statements Relating to Personal Injuries—Penalty.** No phonographic reporter for any court of record in the state of Wisconsin or any of his assistants shall be employed by any person or corporation to take the statement of any injured or other person in any way relating to the manner in which the person was injured or killed or the extent of personal injuries, and any reporter or assistant violating the provisions hereof shall be removed and shall not be permitted to testify in any court concerning any such statement taken in violation hereof. (1913 c. 688; 1913 c. 773, s. 76; St. 1913, § 4078m.)

#### DISTRICT COURT—MILWAUKEE COUNTY.

**Appointment—Oath—Duties—Transcripts and Compensation for—Salary.** The judge of said district court is hereby authorized to appoint a phonographic reporter for such court. The person so appointed shall be deemed an officer of the court, and before entering upon the duties of his office shall take and subscribe the constitutional oath of office and file the same duly certified to, in the office of the county clerk of Milwaukee county. Such reporter so appointed shall attend all the sessions of said district court and shall report all preliminary examinations held before said court; but in all cases of prosecutions for violations of the ordinances of the city of Milwaukee, and in all prosecutions for misdemeanors, said reporter shall not be required to report such trial or proceeding, nor shall it be necessary for said judge of said court to take minutes of the evidence given before him, but the said district judge may, in his discretion, require said reporter to report and transcribe the evidence given upon any trial or proceeding, other than preliminary examinations, which may be had before said court. Such reporter shall receive five cents per folio for transcripts when written out in full and ten cents per folio when written out in narrative form. It

shall be the duty of such reporter to transcribe, as soon as may be, the charge of the court to the jury, in such jury cases as he shall have been directed to report, and the evidence taken upon preliminary examinations, whether the accused shall be held for trial or discharged, and file the same within ten days after reporting such testimony with the clerk of said court. For attendance upon said court and reporting, transcribing and filing testimony, duly certified to as correct, said reporter shall be entitled to receive as compensation such a salary and transcript fees as shall be fixed by the county board. Fees and salary so fixed shall be payable monthly at the end of each month out of the treasury of said county. Fees for transcribing testimony shall be paid by the county treasurer upon certificate of said court. (Ch. 490, Laws 1911.)

#### COUNTY COURTS.

**Appointment—Duties—Transcripts.** The judge of any county court may, whenever the occasion may require, appoint, and remove at pleasure, a phonographic reporter to attend upon the court and take the testimony of any witness or witnesses, in any contested matter, or proceeding, that may be pending or upon trial in such court. And, whenever he shall deem it necessary, such judge may require such reporter to make and file in such court, a correct typewritten transcript of such testimony. Every person so appointed shall be deemed an officer of the court, and shall discharge such duties as the court or judge thereof shall require, and before entering upon the duties of his office, shall take and subscribe and file in such court the constitutional oath of office. (§ 4052 c, St. 1913.)

**Compensation.** The judge of the county court shall certify to the county board of supervisors of his county the number of days, and the number of half days, of actual service performed by such reporter in the performance of said duties, and such reporter shall be allowed by the county board compensation for his services, not exceeding ten dollars for each day, and five dollars for each half day of such services actually rendered by him and as certified by said judge. All claims for such compensation shall be made out and filed, allowed and paid in the manner provided by chapter 36 of the statutes. (§ 4052d, St. 1913.)

**Compensation for Transcripts.** Such reporter shall furnish to any party interested a correct typewritten transcript, or copy thereof, of the testimony taken by him in any matter or proceeding mentioned in § 1, upon being paid therefor at the rate of five cents per folio. (§ 4052e, St. 1913.)

**Exceptions.** §§ 4052c, 4052d and 4052e, of the statutes shall not apply to, or in, any county court provided with a phonographic reporter under any law existing on May 4, 1903. (§ 4052f, St. 1913.)

#### COUNTY COURTS—MILWAUKEE COUNTY.

**Appointment—Duties—Compensation—Transcripts.** Each judge of the county court in counties having a population of at least two hundred and fifty thousand, according to the last state or United States census, is authorized to appoint for said court a shorthand reporter, whose duty it shall be to attend upon each term of said court when required by the judge, for the purpose of reporting the oral testimony of the witnesses and such other matter as the judge of said court may direct, the said shorthand reporter to be a sworn officer of the court and fully competent to discharge the duties thereof. He shall hold his office at the pleasure of the judge and shall receive for his services a salary of three thousand dollars per annum, payable monthly at the end of each and every month out of the treasury of said coun-

ty. The county judge may, in his discretion, order a transcript of the testimony of the witnesses examined in said court or any part thereof, and of the proceedings therein, to be made and certified by the reporter and filed with the register of probate, and the cost thereof, at the rate of five cents per folio shall be paid by the county treasurer upon the certificate of the register of probate. In case any person desires a transcript in longhand of the evidence taken in any proceeding in said court, or any part thereof, said reporter shall make such transcript duly certified by him to be correct, and he shall be entitled to receive from the party requesting the same five cents per folio when written out in full. (Ch. 489, Laws 1909.)

#### MUNICIPAL COURTS.

**Milwaukee County—Appointment—Oath—Duties—Compensation.** The judge of said court is authorized to appoint a phonographic reporter skilled in the art of shorthand reporting, who shall be deemed an officer of court, and who shall take an oath and attend upon the regular terms of said court, reporting all trials or proceedings when directed by the judge so to do. He shall receive a salary of \$3,000 per annum, payable monthly out of the treasury of Milwaukee county; and five cents per folio for transcripts. He shall be furnished with all necessary stationery. He shall file a transcript of the charge of the court in all criminal cases as soon as may be, free of charge. (Laws 1907, c. 473.)

**Racine County—Appointment—Oath—Duties—Compensation.** Judge may appoint one or more competent phonographic reporters to hold office during his pleasure, such reporters to be officers of court and take an oath. Every such reporter shall attend when required by said judge, and report the proceedings of trials had in said court, and perform such duties as said judge may require. Compensation, not to exceed \$5 for each day's attendance to be paid from the county treasury; transcripts to be paid for as provided in § 113.20 Wis. Stats. 1913. (Laws 1915, c. 193.)

#### CIVIL COURTS—MILWAUKEE COUNTY.

**Clerk and Deputy Clerks.** Said civil court shall have a clerk and seven deputy clerks . . . (Ch. 549, Laws 1909, § 11, Subd. 1.)

**Compensation.** Each of said deputy clerks shall receive an annual salary to be paid by the county . . . and the Board of Supervisors of Milwaukee county shall by resolution duly passed fix the salary of the assistants and clerks of said court at such amount as they may determine, and such board may at any time by resolution increase the salary of the judges, clerks or assistants of said court. (Id., § 13, subd. 3.)

**Deputy Clerks to be Competent Phonographic Reporters—Fees for Transcripts.** Said deputy clerks shall be competent phonographic reporters and shall take phonographic notes of any trial had in said court for the convenience and use of said judge or judges. They shall when requested by said judges or either of them, transcribe such phonographic notes into longhand for the use of said judges, and shall also transcribe into longhand such notes of the testimony or such part thereof as may be requested by any party to any action or proceeding or his attorney; provided, however, that for each copy of such testimony so furnished to any party or his attorney they shall charge five cents for each folio of one hundred words so transcribed . . . to be paid and belong to the phonographic reporters by whom . . . said transcripts shall be . . . furnished. (Ch. 747 Laws 1913, amending Subd. 4 of § 11 of Ch. 549, Laws of 1909, as amended by Ch. 374, Laws of 1913.)



## SUPERIOR COURTS.

**Fond du Lac County—Appointment—Duties—Compensation.** The judge of said court shall appoint a phonographic reporter skilled in the art of shorthand reporting, who shall also act as clerk of said court, and whose salary shall be \$75 a month. Transcript fees, five cents per folio for original and 2½ cents for copies. (Laws 1915, c. 518.)

## FOLIO DEFINED.

The term "folio," when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every figure necessarily used as a word. (Stats. 1913, § 2935.)

## BILLS OF EXCEPTION.

**Contents.** The bill of exceptions shall include all the testimony set forth by question and answer as shown by the transcript of the reporter's notes, unless the parties to the action stipulate otherwise. (Laws of 1907, Ch. 547.)

## CORONERS.

**Appointment—Transcript Fees.** Any officer authorized to take inquest may, upon the order of the district attorney for his county, employ a stenographer to take and transcribe the testimony of all witnesses examined at any inquest held by him. Such stenographer shall receive ten cents per folio for all the testimony taken and transcribed by him, his account therefor, after being audited by the proper county board, shall be paid by the county treasurer. (§ 4872, Stats. 1913.)

## CORONER—MILWAUKEE COUNTY.

**Appointment—Duties—Compensation.** The county board of any county having a population, as shown by the last census, of two hundred and fifty thousand or more, may authorize the coroner to appoint, in addition to the officers already provided by law, a stenographer. It shall be the duty of said stenographer to take and transcribe the testimony of all witnesses examined at any inquest held, and perform such other duties as the coroner may require, also to assist in the work of the district attorney's office when not necessarily engaged in the performance of duties for the office of county coroner. The salary for said stenographer shall be fixed by the county board of supervisors of said county and shall be paid from the treasury of such county at the same time the salaries of other county officers are paid. (§ 697-51, Stats. 1913.)

# WYOMING

## DISTRICT COURTS.

**Appointment—Term.** The office of official court reporter for each judicial district in the state of Wyoming is hereby created, and the judge of each judicial district in the state of Wyoming is hereby required and empowered to appoint one court reporter for his district, whose term of office shall be during the pleasure of the judge making such appointment and until their successor is appointed and qualified, and who shall devote their entire time to the performance of their duties. (Comp. Stats., 1910, § 940.)

**Qualifications—Examination—Removal.** Before any person can be appointed as official reporter of any district court in this state, he or she shall be a resident of said district, and shall be examined as to his or her competency, by at least three members of the bar practicing in said court, and such committee shall be appointed by the judge thereof, and such test of competency shall be as follows: Applicant shall write in the presence of the committee at the rate of at least one hundred and twenty words per minute for five consecutive minutes, from questions and answers not previously written by him or her, and transcribe the same with accuracy. If the applicant passes this test satisfactorily, a majority of the committee shall furnish him or her with a certificate of that fact, which shall be filed with the records of the court. Provided, however, that said court reporter shall be subject to the supervision and control of the judge of the judicial district appointing him, and for omission or neglect of duty, misconduct or failure to comply with the provisions of this act, he or she may be removed by the judge of said judicial district, upon cause being shown therefor, by order of said judge, who shall have power to appoint his successor. (Id., § 941.)

**Duties.** Such reporter shall be in constant attendance upon the judge of said court at all times, and shall be the clerk and stenographer of the judge, and he or she shall be sworn to the faithful performance of his or her duty and take the oath of office required in the constitution of this state, and shall remain in attendance on the court, and take full stenographic notes in cases tried during said attendance, of all testimony or admissions made by either side, objections to the introduction of testimony, the ruling of the court thereon, the exceptions taken thereto, and such other proceedings as the court may direct. He or she shall preserve and furnish a transcript of said stenographic notes for all or any part thereof, to any person having an interest therein upon payment of the fees prescribed by law. (Id., § 942.)

**Bond.** Each official reporter, appointed as aforesaid, shall give a bond to the state of Wyoming, with sufficient sureties, to be approved by the judge of the district court of such district, and filed with the secretary of state, in the sum of one thousand dollars, conditioned for the faithful and efficient performance of the duties of said office. (Id., § 943.)

**Transcripts as Evidence—Certification of.** Such reporter shall not have a seal, but all transcripts of evidence and proceedings, written out by him or her, and certified to by him or her as the official reporter of the court for which he or she is acting, shall, when there is attached thereto a certificate of the clerk of the court that such person is the official reporter thereof, be received as the prima facie evidence of the facts, testimony and proceedings set forth in such transcript. (Id., § 944.)

**Stenographic Work for Judge.** Each official reporter appointed under the provisions of this chapter, as court reporter, shall also be the stenographer of the judge of said court and shall do and perform such stenographic labor for the judge of said court as of him or her may be required in his official capacity as judge. (Id., § 945.)

**Fees for Services, Amount of—To be Paid to State.** In all criminal cases said official reporter shall charge, and the board of county commissioners of each county wherein such service is rendered, shall pay the sum of five dollars per day for and during the time such reporter may be engaged in the report of each and every criminal case, which fees shall be collected by such reporter, upon the certificate of the judge, that such services have been rendered; and in all civil cases such reporter shall likewise charge the sum of five dollars per day for reporting each case, the sum to be paid by the parties litigant who may desire such service, and which shall be paid in advance. Such reporter shall charge the sum of fifteen cents per folio of one hundred words for all transcripts, records, bills of exception and other papers required to be made and issued by him or her as such official reporter, and the sum of five cents per folio of one hundred words for each carbon copy of the same, to be collected before the delivery of the work, all of which fees and earnings shall be paid into the state treasury on the first Monday of each month after the service has been performed, and such stenographer shall be liable upon his official bond for the proper collection and paying over of such fees. (Id., § 946.)

**Salary and Traveling Expenses.** Each official district court reporter in this state shall be paid a salary of eighteen hundred dollars per annum, payable in equal monthly installments, upon the warrant of the state auditor upon the state treasurer, and such official reporter shall be allowed the sum of two hundred and fifty dollars per annum in the First judicial district; five hundred dollars per annum in the Second judicial district; two hundred and fifty dollars per annum in the Third judicial district; and five hundred dollars per annum in the Fourth judicial district, to pay the traveling and other expenses of said reporter in attending to his or her official business, to be paid by warrant upon the state treasurer by the auditor of said state, upon sworn vouchers filed with the auditor of said state. (Id., § 947.)

**Substitute.** In case of sickness, or if said official reporter be unable to attend to his official duties from any cause at any time, the judge of the district court in each judicial district in this state when the trial of cases required to be reported necessitates it, is authorized and empowered to obtain a suitable and competent person as substitute for such official court reporter, during such disability; such substitute to receive the fees herein provided for in full compensation for such services. And in all cases where any signature of the official court reporter is required, the same, during the absence or any such disability of the official court reporter, shall be signed by the person substituted therefor as acting official court reporter, and in such cases the same shall have the same legal force and effect as if signed by the official court reporter. (Id., § 948.)

## APPENDIX

### CHARTERED STENOGRAPHIC REPORTERS' ACT OF ONTARIO, CANADA.

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as The Stenographic Reporters' Act.
2. In this Act, "The Association" shall mean The Chartered Stenographic Reporters' Association of Ontario.
3. The Association is hereby continued.
4. The Association may purchase, take and possess for the purposes of the Association, but for no other purpose, and after acquiring the same may sell, mortgage, lease or dispose of any real estate the annual value of which shall not at any time exceed \$5,000.
5. Subject to the provisions of this Act and to the by-laws of the Association the Association shall consist of its present members and all persons who shall cause their names to be registered under the provisions of this Act.
6. (1) The Association shall have power to promote and increase by all lawful ways and means the knowledge, skill and proficiency of its members in all things relating to the business or calling of a stenographer, and to that end to establish classes, lectures and examinations and prescribe such tests of competence, fitness and moral character as may be thought expedient to qualify for admission to membership, to grant diplomas and certificates of efficiency, and to authorize its members to use the distinguishing title "Chartered Stenographic Reporter" or the letters "C. S. R."  
(2) The Association may also prescribe for students of stenography, who desire to become members of the Association, such examinations and may grant to them such certificates of competency as it sees fit, and may organize the students into a society in affiliation with itself for study and mutual improvement.
7. (1) The Association, in general or special meeting assembled after due notice, may pass by-laws for carrying out its objects.  
(2). Unless otherwise provided by the by-laws no new by-law shall be passed, nor shall any by-law be altered or repealed, except by a two-thirds vote of the members present at a meeting of the Association, and only after at least two weeks' notice in writing of the proposed alteration or repeal shall have been given or mailed to each member.
8. (1) The affairs, business and concerns of the Association shall be managed by a Council composed of nine persons who shall be British subjects, who have resided and practiced the profession of stenography within Ontario for at least five years.  
(2) The members of the Council shall be elected by voting papers in the manner provided for by the by-laws, at the annual meeting or at a special meeting called for that purpose, and the members obtaining the greatest number of votes shall be declared elected.  
(3) No person shall be eligible for election to the Council or qualified to fill any vacancy therein or to vote for any member thereof unless duly qualified under the provisions of this Act and the by-laws of the Association.  
(4) The members of the Council now in office shall respectively hold office for the remainder of the term for which they were elected and until their successors are chosen.

(5) Subsequently elected members shall hold office for three years from the time of their election and until their successors are chosen.

(6) A member chosen to fill a vacancy shall hold office for the residue of the term for which his predecessor was elected or appointed.

(7) Five members of the Council shall form a quorum.

9. (1) At the close of the annual meeting the Council shall meet and choose from among themselves a President, a Vice-President, a Secretary, a Treasurer and such other officers as may be provided for by the by-laws.

(2) In the event of the office of President becoming vacant the Vice-President shall become President for the remainder of the term.

(3) All other vacancies among the officers or the members of the Council shall be filled by the Council.

(4) The Council may remove any officer for misconduct or other sufficient cause, and may appoint his successor for the remainder of the term.

10. (1) The Council may, by a vote of two-thirds of all the members thereof, admit to membership in the Association, without examination, a stenographic reporter who by reason of his professional reputation and standing is deemed qualified for membership.

(2) The Council may also, by a two-thirds vote of all its members, admit as honorary members of the Association such persons resident in Ontario or elsewhere as they may deem deserving.

(3) An honorary member shall not be entitled to vote at an election or at a meeting of the Association or to be elected a member of the Council.

11. The annual meeting of the members of the Association for the election of the Council, and for such other business as may be brought before such meeting, shall be held at such time and place and under such regulations and after such notices as the by-laws of the Association shall prescribe.

12. (1) The Council shall cause to be kept by the Secretary a register in which shall be entered in alphabetical order the names of all members in good standing, and those members only whose names are entered in the register shall be entitled to the privileges of membership, and the register shall at all times be open to inspection by any person free of charge.

(2) The register, or a copy of it certified by the Secretary, shall be prima facie evidence that the persons therein named are members of the Association in good standing.

13. The Association may limit the term of all diplomas and certificates granted to it to one year from the date of granting the same, and may withhold the granting or renewal of the same, together with all the other privileges of membership, from any person who neglects to pay the prescribed fees when they are due and so long as they remain unpaid.

14. (1) The Council may fix an entrance and an annual fee to be paid by all members to the Association, and may vary the amount from time to time; and no member shall be personally liable for any debt of the Association beyond the amount of his unpaid fees.

(2) The Council may also prescribe examination fees to be paid by applicants for examination.

15. (1) No person shall be entitled to take or use the title of "Chartered Stenographic Reporter," or the letters "C. S. R.," either alone or in

combination with any other words, or any name, title or description implying that he is a member of the Association, unless he is a member in good standing.

(2) Every person who uses such title or such letters contrary to the provisions of this section shall incur a penalty not exceeding \$25 for the first offense and not exceeding \$100 for each subsequent offense recoverable under The Ontario Summary Convictions Act.

16. The Association may by by-law provide for the suspension or expulsion, after due inquiry, of any member for misconduct or violation of the by-laws of the Association.

17. (1) All fees payable under this Act may be recovered as debts due to the Association.

(2) Penalties recovered under the authority of this Act shall be paid immediately on the recovery thereof by the convicting justice to the Treasurer of the Association.

(3) The Council may allot such portion of a penalty as may be deemed expedient to the prosecutor or complainant.

18. If a person ceases to be a member of the Association he shall not, nor shall his representatives, have any interest in or claim against the funds or property of the Association. (R. S. Ontario, 1914, C. 168.)

## PART II—DECISIONS

### 1—STATUS.

1A Stenographers.

1B Notes, Transcript, etc.

#### 1A Stenographers.

Stenography is an art—shorthand writing, the use of abbreviations or characters for whole words.

(La.) *Lichtentag v. Tax Collector* (1894), 46 La. Ann. 572, 15 So. 193.

From the Greek derivation of the term “stenography,” it means to write in narrow compass.

(W. Va.) *Cummings v. Armstrong* (1890), 34 W. Va. 1, 11 S. E. 742.

A stenographer is one who writes by using characters or abbreviations for words.

(Neb.) *In re Appropriation for Deputies* (1889), 25 Neb. 662, 41 N. W. 643.

A court stenographer is a person who officially takes down in shorthand the testimony, rulings and charge of the court at the trial of a case.

*Anderson's Law Dictionary.*

A stenographer is not within the common law definition of “clerk.”

(Neb.) *In re Appropriation for Deputies* (1889), 25 Neb. 662, 41 N. W. 643.

A stenographer when appointed and qualified is an officer of the court appointing him.

(Colo.) *Keady v. Owers* (1902), 30 Colo. 1, 69 Pac. 509.

(Idaho) *Raft River Land etc. Co. v. Langford* (1898), 6 Idaho 30, 51 Pac. 1027.

(Iowa) *Burnett v. Loughridge* (1893), 87 Iowa 324, 54 N. W. 238. *Manatt v. Scott* (1898), 106 Iowa 203, 76 N. W. 717.

(La.) *State v. Clerk* (1895), 47 La. Ann. 358, 17 So. 48.

(Mo.) *State ex rel Martin v. Wofford* (1894), 121 Mo. 61, 25 S. W. 851; *State ex rel v. Hitchcock* (1913), 171 Mo. App. 109, 153 S. W. 546.

(N. Y.) *Varnum v. Wheeler* (1886), 9 Civ. Pro. (N. Y.) 421.

(Or.) *Tallmadge v. Hooper* (1900), 37 Or. 503, 61 Pac. 349.

(Pa.) *Chase v. Vandergrift* (1878), 88 Pa. 217; *Rosenthal v. Ehrlicher* (1893), 154 Pa. 396, 26 Atl. 435; *Commonwealth ex rel v. Arnold* (1894), 161 Pa. 320, 29 Atl. 270.

(W. Va.) *Cummings v. Armstrong* (1890), 34 W. Va. 1, 11 S. E. 742.

(Wyo.) *Richardson v. State* (1907), 15 Wyo. 465, 89 Pac. 1027, 12 A. & E. Cas. 1048.

Upon a reference of a case, a stenographer does not hold an official position.

(N. Y.) *Coale v. Suckert* (1896), 18 Misc. 76; 75 N. Y. S. R. 973, 41 N. Y. S. 533.

Official stenographers are ministerial officers of the court and are not county officers.

(Cal.) *Ex parte Reis* (1883), 64 Cal. 233, 30 Pac. 806; *Stevens v. Truman* (1899), 127 Cal. 155, 59 Pac. 397.

The court stenographer of a judicial district does not hold a “confidential position” within the civil service law; the stenographer being only

required to attend the terms of court, make stenographic record of all proceedings in court, preserve the minutes, supply copies to the court, attorneys and the parties, and owing no duty of a confidential nature to the presiding justice holding trial terms away from the county of his residence.

(N. Y.) *People ex rel v. Milliken* (1911), 72 Misc. 430, 130 N. Y. S. 1.

If a court in certifying to a bill of exceptions, recognizes the person who took the evidence as the official stenographer, such person becomes the stenographer and was a de facto officer of the court.

(Iowa) *Etter v. O'Neil* (1891), 83 Iowa 655, 49 N. W. 1013; *Meador v. Allen* (1900), 110 Iowa 588, 81 N. W. 799.

The office of stenographer may be abolished or modified by the legislature. Therefore, a stenographer appointed for a circuit court cannot complain if the circuit is divided into two circuits and another stenographer appointed for one of them.

(Mo.) *State ex rel v. Ford* (1890), 41 Mo. App. 122.

If the statute fixing the duration of official tenure is ambiguous, that interpretation is followed which limits the term to the shortest time. A statute declaring that the stenographer of the circuit court "shall hold his office during the term of the judge appointing him," is uncertain, indefinite and ambiguous. And under such statute (Rev. Stat. 1909, §11244) where a judge resigns without filling his full term, the stenographer's term of office terminates, and the judge elected to fill the vacancy may appoint a new stenographer.

(Mo.) *State ex inf. Major v. McKay* (1913), 249 Mo. 249, 155 S. W. 396.

### 1B Notes, Transcript, etc.

A transcript is a translation into English of testimony taken in shorthand.

(La.) *Nichols v. Harris* (1880), 32 La. Ann. 646.

Testimony cannot be said to be taken down until it has been transcribed into language which can be read by those whose duty it is to record it.

(Ga.) *Henderson v. Parry* (1893), 93 Ga. 255, 20 S. E. 107.

The giving of a partly written and partly oral charge to the jury is error where written instructions have been requested; and the fact that a stenographer present in court took down the charge as given by the judge is not a sufficient compliance with the requirements of the statute in that respect.

(Wash.) *State v. Miles* (1896), 15 Wash. 534, 46 Pac. 1047.  
See cases cited under 13A of this Digest.

A transcript is a memorial of the evidence and the rulings and charge of the court.

(Miss.) *Sanders v. State* (1897), 74 Miss. 531, 21 So. 299.

Under § 4442 the "phonographic report of the testimony on file" means the stenographic report or shorthand notes of the stenographer, and not the transcript of the testimony.

(Idaho) *Kelley v. Clark* (1912), 21 Idaho 231, 121 Pac. 95.

The stenographic notes are the original notes of the testimony in a case, and a translation thereof is only a copy to be used because the shorthand notes cannot be read by all persons.

(Iowa) *Lowe v. Lowe* (1875), 40 Iowa 220.

Where the certificates of the judge and the reporter attached to the shorthand notes were also written in shorthand, held that shorthand char-



acters are not "writing" within the meaning of a statute providing for certification of the record, as such certificates are insufficient as a means of identification to the ordinary person.

(Iowa) *Howerton v. Augustine* (1911), 153 Iowa 17, 132 N. W. 814.

The characters used in stenography cannot be said to be in the English language.

(Ind.) *Merrick v. State* (1878), 63 Ind. 327.

Stenographic notes are in writing, although not transcribed.

(La.) *Nichols v. Harris* (1880), 32 La. Ann. 646.

Where the state furnishes the county attorney with a stenographer who takes the evidence given at a preliminary examination for and under the direction of the county attorney, and afterwards transcribes the same for the county attorney, who uses it in the examination of witnesses on the trial of the same case in the District Court, such transcript is not a public document, but is the private property of the county attorney, and the attorney for the defendant has no legal right to the possession or use thereof.

(Kan.) *State v. Laird* (1908), 79 Kan. 681, 100 Pac. 637.

A phonographic report of testimony taken on a trial and having no intrinsic value except for such report, may be the subject of larceny as personal property. Such report having no market value, its value to the person who can use the testimony is the proper standard of value.

(Utah) *People v. McGrath* (1888), 5 Utah 525, 17 Pac. 116.

Where one party in a civil case had procured a transcript of the testimony on the former trial, for use in preparing for the second trial, at the party's own expense, it was the private memorandum of such party and he should not be required to deliver it to the adverse party, unless it was used in evidence by the party holding it, or witnesses were examined in relation thereto, or in some manner it became a document present in the court room which it was proper for the adverse party to have to introduce in evidence.

(Ga.) *Atlantic & B. R. Co. v. Sumner* (1910), 134 Ga. 673, 68 S. E. 593.

The Kentucky statute providing in substance that a deposition must be written and subscribed by the witness in the officer's presence, or written by the officer in the witness' presence, etc., does not require the officer to do the manual labor of writing the deposition, but permits the use of a clerk or stenographer in taking down and transcribing the answers of the witness.

(Ky.) *W. U. Tel. Co. v. Corso* (1905), 121 Ky. 322, 89 S. W. 212, 11 Am. & Eng. Ann. Cas. 1065.

See Note, "Persons Who May Write Depositions," 11 A. & E. Ann. Cas. 1065.

Under act 1904, p. 298, c. 121, providing for fees of ten cents per folio for copying a pleading or other paper, *held*, that a notary in transcribing his shorthand notes of a deposition copied "a record or other paper" within the meaning of the act.

(Ky.) *Reuscher v. Attorney General* (1906), 30 Ky. Law Rep. 109, 97 S. W. 397.

## 2—CONSTITUTIONALITY OF STATUTES.

- A Statutes held Constitutional.
- B Statutes held Unconstitutional.

### 2A Statutes Held Constitutional.

The constitution of Ill. provides that all laws relating to courts of the same class or grade shall be general and of uniform operation, and that the organization, practice, etc. of courts of the same class or grade, so far as regulated by law, shall be uniform. Laws of 1887, p. 150, authorized judges of the circuit court to appoint official stenographers for their respective courts, and prescribed their duties, compensation, etc. *Held*, that the act was constitutional, as it did not confer upon judges of the circuit courts judicial powers not granted to other courts of the same class, as the taking of stenographic notes was not a part of the proceedings or practice of the courts; and that as the superior court of Cook county is of the same class as a circuit court, that the act applied to the superior court.

(Ill.) *People ex rel v. Raymond* (1900), 186 Ill. 407, 57 N. E. 1066.

The fact that a statute does not provide that stenographers' fees for bills of exceptions ordered by defendants in criminal cases shall be paid by the county treasurer, does not deprive defendant of a constitutional right.

(Ohio) *Carr v. Summit County* (1902), 24 Ohio C. C. 161.

On the retrial of a criminal case a transcript of the testimony of a witness on the first trial who is beyond the jurisdiction of the court may be read without violating the constitutional right of the defendant to be confronted with the witnesses against him.

(Iowa) *State v. Kimes* (1911), 152 Iowa 240, 132 N. W. 180; *State v. Brown* (1911), 152 Iowa 427, 132 N. W. 682; *State v. Conklin* (1911), 153 Iowa 216, 133 N. W. 119.

The legislature may place upon a county the burden of paying for typewritten copies of stenographic reports of trials furnished to the parties or their counsel in private litigation. Such a law is not unconstitutional, since the public has an interest in the prompt, efficient and certain administration of justice.

(Pa.) *Clift v. Philadelphia* (1909), 41 Pa. Super. Ct. 638.

Under a state constitution authorizing municipal charters to provide for the constitution and jurisdiction of police courts and for the appointment and compensation of the attaches of the judges, a city may provide for the appointment and compensation of stenographic reporters.

(Cal.) *Elder v. McDougald* (1904), 145 Cal. 740, 79 Pac. 429.

A stenographer appointed under the act of 1903 providing for the appointment of official stenographers of the district courts, which provides that the stenographers shall be sworn officers of the court and shall hold office during the pleasure of the court, is not an office within the meaning of the constitution which provides that the duration of offices not provided for in the constitution shall not exceed two years.

(Tex.) *Robertson v. Ellis County* (1905), 38 Tex. Civ. App. 146, 84 S. W. 1097.

The act of March 21, 1885, in regard to the appointment and compensation of official stenographers is not unconstitutional as violating the rule of uniformity in county governments, nor as imposing upon the people a new set of officials.

(Cal.) *Smith v. Strother* (1886), 68 Cal. 194, 18 Pac. 852.

Laws of 1913, c. 126, entitled "An act providing for the appointment of official court reporters, etc.," requiring the parties to a civil action to pay

the sum of one dollar as stenographer's costs, and relating to the perpetuation of testimony, *held* constitutional.

(Wash.) State ex rel v. Derbyshire (1914), 79 Wash. 227, 140 Pac. 540.

Acts 32 Leg., c. 119, providing for the appointment of stenographers, prescribing their qualifications and duties, and prescribing the time and method of making up and filing statements of facts and bills of exceptions, *held* not unconstitutional because containing more than one subject.

(Tex.) Gibson v. Singer Sewing Mach. Co. (1912), 145 S. W. (Tex. Civ. App.) 633.

Neither § 10, nor 13, of Art. 10 of the constitution, containing the provision that every person who is elected or appointed to any office in the state, who shall be paid in whole or in part by fees, shall be required by law to make a semi-annual report under oath to some office to be designated by law, of all his fees and emoluments, refers to an office created by the legislature.

(Ill.) State ex rel v. Chetlain (1905), 219 Ill. 248, 76 N. E. 364.

A certified copy of the testimony of a witness as taken by the official stenographer, is competent, and is not in contravention of the constitution.

(Me.) State v. Frederic (1879), 69 Maine 400.

A statute allowing the judge of each judicial district court to appoint an official stenographer to hold office during the pleasure of the judge is not unconstitutional.

(Idaho) Gilbert v. Moody (1891), 3 Idaho 3, 25 Pac. 1092.

A court in fixing the compensation of its own reporter is not fixing the salary of a county officer, but is adjusting the compensation for services of a ministerial officer of the court, and in so doing acts in a judicial capacity, and not in a legislative capacity.

(Cal.) Stevens v. Truman (1899), 127 Cal. 155, 59 Pac. 397.

The charter of a city may prescribe the duties and fix the compensation of reporters in police courts, in reference to preliminary examinations, different from the duties and compensation prescribed by the general law of the state.

(Cal.) Trefts v. McDougald (1911), 15 Cal. App. 584, 115 Pac. 655.

The legislature has the constitutional authority to require the salary of the stenographic reporter of a state court in cities of 100,000 inhabitants to be paid out of the city treasury, and such requirement is not in violation of the charter rights of such city. It is not for the courts to say that a part of the burden of such salary should be paid out of the county treasury.

(Mo.) Young v. Kansas City (1899), 152 Mo. 661, 54 S. W. 535.

The provision of Laws 1913, p. 386, authorizing appointment of court stenographers, that the act shall not apply to any county having a population of 200,000 or over, *held*, valid.

(Wash.) State v. Frater (1915), 147 Pac. 25.

Acts 32d Leg., c. 119, providing for the appointment of official stenographers for district and county courts, *held* constitutional.

(Tex.) Rice v. Roberts (1915), 177 S. W. (Civ. App.) 149.

## 2B Statutes Held Unconstitutional.

A judge has no right to delegate to the stenographer the power of authentication, and a statute permitting such delegation is unconstitutional.

(Pa.) Connell v. O'Neil (1893), 154 Pa. 582, 26 Atl. 607.

A statute which requires a judge to certify that a transcript of the evidence certified to by the official reporter, is correct, is unconstitutional.

(Ind.) Adams v. State (1901), 156 Ind. 596, 59 N. E. 24; Ladd v. Kuhn (1901), 27 Ind. App. 535, 61 N. E. 747; Oster v. Broe (1902), 161 Ind. 113, 64 N. E. 918; Crane v. Osborn (1903), 30 Ind. App. 640, 66 N. E. 772.

An act which provides for the fixing of a stenographer's salary by a judge by an order entered on the books of the court, and which provides for the payment of the salary of a stenographer out of the county treasury in the same manner as the salary of other county officers, is unconstitutional, as it imposes legislative functions upon the judiciary.

(Cal.) Smith v. Strother (1886), 68 Cal. 194, 18 Pac. 852.

An act which imposes upon a judge of a court the power to fix a monthly salary of the official reporter for future services to be rendered, is unconstitutional.

(Cal.) Smith v. Strother (1886), 68 Cal. 194, 18 Pac. 852; Stevens v. Truman (1899), 127 Cal. 155, 59 Pac. 397.

The legislature has no power to classify counties, except for the purpose of regulating the compensation of county officers, among which the official reporters of the superior court are not included, and its action in fixing the salary of official reporters in counties of the 30th class is unconstitutional and void.

(Cal.) Pratt v. Browne (1902), 135 Cal. 649, 67 Pac. 1082.

The effect of the classification of counties of one class in fixing the salaries of official reporters is the same as if each county of that class were mentioned by name, and not being founded on any natural or intrinsic or constitutional distinction, the legislation is special and local, and violates the constitution.

(Cal.) Pratt v. Browne (1902), 135 Cal. 649, 67 Pac. 1082.

Stat. 1911, p. 1165, authorizing the judge of the superior court of the 27th class to appoint a stenographer, etc., there being but one county in such class, held unconstitutional.

(Cal.) Payne v. Murphy (1912), 18 Cal. App. 446, 123 Pac. 350.

### 3—APPOINTMENT AND QUALIFICATIONS.

- A Who may be appointed.
- B Power to appoint, in general.
- C Power of Admiralty Courts to Appoint.
- D Appointment in criminal cases.
- E Review of action of judge refusing to appoint.
- F Stenographers before grand jury.
- G Necessity for oath.

#### 3A Who May Be Appointed.

Where a stenographer is selected to report the proceedings of the grand jury under the provisions of Penal Code, § 925, it is not essential that the one selected be an official reporter of the superior court, and §§ 270 and 271 of the Code of Civ. Proc. have no application.

(Cal.) *People v. Delhantie* (1912), 163 Cal. 461, 125 Pac. 1066.

A member of a grand jury may act as its stenographer and receive extra compensation for such service from the county.

(Mich.) *People v. Lander* (1890), 82 Mich. 109, 46 N. W. 956.

A reporter appointed by a magistrate to report a preliminary examination under a statute requiring a "competent" reporter, need not possess the qualifications prescribed for reporters of superior courts; and objection to the competency of a reporter at a preliminary examination is waived if not made at the time of such examination, if defendant was there represented by an attorney.

(Cal.) *People v. McIntyre* (1900), 127 Cal. 423, 59 Pac. 779.

#### 3B Power to Appoint, In General.

A court has no power to employ a stenographer at the expense of the government unless authorized by statute so to do.

(U. S.) *Bridges v. Sheldon* (1880), 18 Blatch. (U. S. C. C.) 507, 7 Fed. 17.

Courts are in the habit of employing a stenographer to take down the testimony when allowed by statute, as experience has shown that it facilitates the conducting of trials.

(Ill.) *Chicago & Alton R. R. Co. v. Robinson* (1884), 16 Ill. App. 229.

(Kan.) *Wright v. Wright* (1897), 58 Kan. 525, 50 Pac. 444.

(Pa.) *Harris v. Philadelphia Traction Co.* (1897), 180 Pa. 184, 36 Atl. 727.

Under the statute authorizing the appointment of a stenographer on the trial of causes in court, a stenographer cannot be appointed upon a reference before a commissioner.

(W. Va.) *Weigand v. Alliance Supply Co.* (1898), 44 W. Va. 133, 28 S. E. 803.

Under Stat. 331, subs. 17, authorizing the county court of certain counties to appoint a stenographer, and providing for his compensation, a county court within this act may appoint a stenographer and fix her salary.

(Ky.) *Woodruff v. Goldbach* (1913), 153 Ky. 411, 156 S. W. 115.

Under Stat. 331, subs. 17, the fiscal court has no power to appoint a stenographer for the county court.

(Ky.) *Woodruff v. Goldbach* (1913), 153 Ky. 411, 156 S. W. 115.

A master cannot appoint a stenographer.

(N. Mex.) *Givens v. Veeder* (1898), 9 N. Mex. 405, 54 Pac. 879.

Under the provisions of the Sundry Civil Appropriation bills of 1894 and 1895 (27 St. 609, 28 St. 417) the attorney general has power to authorize the employment by the district attorney of a stenographer to assist in preparing indictments.

(U. S.) United States v. Denison (1897), 25 C. C. A. 496, 80 Fed. 370.

A coroner may appoint a stenographer.

(N. Y.) Baker v. N. Y. (1897), 17 App. Div. 435, 45 N. Y. S. 164.

A common council may by resolution authorize the employment of a stenographer.

(N. J.) Salmon v. Haynes (1887), 50 N. J. Law 97, 11 Atl. 151.

The power of a common council under a city charter to investigate the management of a city office implies the power to employ, in accordance with the city charter, a stenographer to report the same.

(N. Y.) O'Brien v. City of Niagara Falls (1909), 65 Misc. 92, 119 N. Y. S. 497.

A private stenographer may be employed by either party to an action to assist him during the trial of a case.

(Kan.) State v. Dreany (1902), 65 Kan. 292, 69 Pac. 182.

One party cannot employ a stenographer at the expense of another by having the expense treated as costs to be taxed in the case.

(N. M.) Givens v. Veeder (1898), 9 N. Mex. 405, 54 Pac. 879.

A stenographer sworn to take the testimony in a cause in the county court, but not in the manner prescribed by statute for an official court reporter, which is more enlarged and broader in scope than the oath administered, is not an official court stenographer within the meaning of the statutes relating to official court stenographers.

(Tex.) Security Trust & Life Ins. Co. v. Stuart (1913), 160 S. W. (Tex. Civ. App.) 108.

If a stenographer is appointed for a limited time and the judge appointing him is ill and cannot appoint a regular stenographer at the expiration of such time, such fact does not extend the temporary appointment, and services rendered by the temporary appointee after his term has expired, will be deemed voluntary, and he cannot recover payment for such services.

(N. Y.) Matter of O'Sullivan (1900), 54 App. Div. 374, 66 N. Y. S. 611.

The appointment of an official stenographer may be made by the several judges of the circuit courts for their respective courts. The death of the judge who appointed the official stenographer does not *ipso facto* terminate his appointment.

(Ill.) People v. Kelly (1907), 134 Ill. App. 642.

See note under "Alaska," Part I of this Digest.

The appointment of a stenographer should be made a matter of record, as it is an act of the court.

(Pa.) Rosenthal v. Ehrlicher (1893), 154 Pa. 396, 26 Atl. 435.

### 3C Power of Admiralty Courts to Appoint.

When a case is tried in admiralty, the testimony should be taken down in full for use in the appellate court in case of appeal, and if there is no official stenographer, one should be procured by counsel with the permission of the court.

(U. S.) Neilson v. Coal, Cement & Supply Co. (1903), 60 C. C. A. 175, 122 Fed. 617.

An admiralty court may authorize the employment of a stenographer to take testimony before a commissioner on a reference, and may tax his

fees as costs, and the court will do so if the parties refuse to stipulate there-to, and the court believes the services of the stenographer are necessary, as for instance in a case which involves a large number of disputed items of account.

(U. S.) *Rogers v. Brown* (1905), 136 Fed. (U. S. D. C.) 813.

### 3D Appointment in Criminal Cases.

It is not error in the absence of statute for a court to refuse to appoint a stenographer in a criminal case, although there is one present and the defendant offers to pay his fees.

(Tex.) *Schoenfeldt v. State* (1892), 30 Tex. App. 695, 18 S. W. 640.

It is discretionary with the court whether the official stenographer shall attend a trial in the St. Louis criminal court.

(Mo.) *State v. Pagels* (1887), 92 Mo. 300, 4 S. W. 931.

The provisions of the Iowa code of 1888 to the effect that the judge shall not direct the testimony to be taken by an official reporter, unless he believes the interests of the state or defendant require it, applies to all criminal cases.

(Iowa) *State v. Frost* (1895), 95 Iowa 448, 64 N. W. 401.

The trial court in the absence of statute has a discretion to refuse to appoint a stenographer in a criminal case.

(Neb.) *Preuit v. People* (1877), 5 Neb. 377.

A person accused of a felony is entitled to the services of a stenographer to assist in the preparation of his defense, if he desires one.

(Kan.) *State v. Dreany* (1902), 65 Kan. 292, 69 Pac. 182.

Under the laws of 1871, the criminal court of Jackson county was established with jurisdiction in cases of felony, and it was required to hold three terms a year in Kansas City, and two terms in Independence. By the revised statutes of 1889 stenographers are to be appointed for courts having jurisdiction in cases of felony, in a city of over 100,000 inhabitants. *Held*, that when the criminal court of Jackson county was held in Kansas City, which had over 100,000 inhabitants, a stenographer should be allowed.

(Mo.) *State ex rel Martin v. Wofford* (1894), 121 Mo. 61, 25 S. W. 851.

Under the laws of 1871 the criminal court of Jackson county was established with jurisdiction in cases of felony, and it was required to hold three terms a year in Kansas City, and two terms in Independence. By the revised statutes of 1889 stenographers are to be appointed for courts having jurisdiction in cases of felony, in a city of over 100,000 inhabitants. *Held*, that a stenographer could not be appointed to the criminal court of Jackson county for a term held at Independence, as that city did not have a population of over 100,000.

(Mo.) *State ex rel v. Murphy* (1894), 125 Mo. 464, 28 S. W. 767.

Under Comp. Laws, 1907, § 4670, the appointment of a stenographer at a preliminary hearing was held sufficient where the stenographer was sworn and acted with the apparent consent of all parties, although no formal appointment appeared.

(Utah) *State v. Gustaldi* (1912), 41 Utah 63, 123 Pac. 897.

### 3E Review of Action of Judge Refusing to Appoint.

The Supreme Court cannot review on appeal the discretion of the trial court as to the attendance of the official stenographer upon the trial of a criminal case in the St. Louis criminal court.

(Mo.) *State v. Pagels* (1887), 92 Mo. 300, 4 S. W. 931.

The refusal of the court in a criminal case to appoint a stenographer, while the regular stenographer is absent, is not error where a bill of exceptions which was prepared by the accused is approved by the judge, and counsel for both sides agree upon a statement of facts, and defendant is not shown to have been injured.

(Tex.) *Andrews v. State* (1903), 76 S. W. (Tex. Cr. Rep.) 918.

Where the statute provided for court stenographers, but one was not appointed for a certain circuit because one fitted for the position could not be had at the statutory compensation, the court was not called upon to delay or stop proceedings in a homicide case to obtain a stenographer.

(Ala.) *Mason v. State* (1910), 168 Ala. 48, 53 So. 153.

A case will not be reversed because the court refused to delay a trial until a stenographer could be obtained, unless such refusal causes a hardship to the party requesting the stenographer or such party is prejudiced.

(Neb.) *Home Fire Ins. Co. v. Johnson* (1894), 43 Neb. 71, 61 N. W. 84.

Although the statute provides that a court shall on the application of either party appoint a stenographer, a refusal to make such appointment would not be reversible error, unless the complaining party was injured thereby. A court is not required to appoint a stenographer when a competent person cannot be had, or the trial will be unreasonably delayed to obtain such person.

(Tex.) *Hines v. Holland* (1886), 3 Willson Civ. Cas., Tex. Ct. App., § 99.

Appointment of a shorthand reporter under Act No. 141 of 1914 is not a ministerial duty of a district judge, where he believes the act unconstitutional.

(La.) *Rapier v. Guedry* (1915), 136 La. 443, 67 So. 322.

### 3F Stenographers before Grand Jury.

Unless permitted by statute, a stenographer cannot be allowed before the grand jury.

(Mo.) *State v. Sullivan* (1904), 110 Mo. App. 75, 84 S. W. 105.

The county commissioners have no power to employ a stenographer for the grand jury, as, under Rem. & Bal. Code, § 2030, no person other than one of the grand jurors can be chosen as clerk.

(Wash.) *Mather v. King County* (1905), 39 Wash. 693, 82 Pac. 121.

Under Crim. Code Practice, § 110, declaring that no person except the attorney for the commonwealth and the witness under examination shall be present while the grand jury are examining a charge, the court had no authority to direct a stenographer to take the testimony before the grand jury. Mandamus will lie to compel the judge of a circuit court to set aside an erroneous order directing a stenographer to take the testimony before the grand jury.

(Ky.) *Commonwealth v. Berry* (1906), 29 Ky. Law Rep. 234, 92 S. W. 936.

A stenographer cannot be appointed to take testimony before the grand jury when neither public justice nor the establishment of private rights requires that the testimony shall be taken by a stenographer.

(Me.) *State v. Bowman* (1897), 90 Maine 363, 38 Atl. 331.

In view of Rev. Stat., 1899, § 2495, (Anno. St., 1906, p. 1495), providing that a grand jury may appoint one of its members clerk to preserve the minutes of testimony before them, it was held reversible error to allow a



stenographer examined as a witness to take testimony for the grand jury and afterwards read her notes to them.

(Mo.) State v. Salmon (1909), 216 Mo. 466, 115 S. W. 1106.

In State v. Natali (Unreported), the indictment was quashed because of the presence before a grand jury of the shorthand reporter of the court, but he was an official having no connection with the district attorney's office and possibly not under his control.

(La.) See Note, 28 L. R. A. 371.

The presence of a stenographer before the grand jury, unless allowed by statute, is ground for setting aside an indictment.

(Cal.) People v. Lon Me (1875), 49 Cal. 353.

Notwithstanding Kirby's Digest, § 2211, provides that no one but the prosecuting attorney and the witnesses shall be present while the grand jury are examining a charge, it is not ground for quashing an indictment that a stenographer is present taking down for the prosecuting attorney the testimony of the witnesses.

(Ark.) Richards v. State (1913), 157 S. W. 141.

In the absence of statute, the district attorney may appoint a stenographer to take testimony before the grand jury for the use of the district attorney, in his official position.

(Ind.) State v. Bates (1897), 148 Ind. 610, 48 N. E. 2.

(U. S.) United States v. Simmons (1891), 46 Fed. (C. C.) 65.

In the absence of a showing that the accused was harmed thereby, the fact that a stenographer took notes of the evidence before the grand jury will not invalidate an indictment.

(Ind.) Courtney v. State (1892), 5 Ind. App. 356, 32 N. E. 335.

The fact that a stenographer is present through the deliberations of a grand jury, while improper and irregular, will not invalidate an indictment, unless the defendant has been harmed thereby.

(Mo.) State v. Sullivan (1904), 110 Mo. App. 75, 84 S. W. 105.

The presence of the stenographer of the state's attorney in the grand jury room during the taking of testimony of witnesses, and the taking and transcribing of such testimony in full, will not abate the indictment in the absence of statutory requirement or prejudice to the accused.

(Vt.) State v. Brewster (1897), 70 Vt. 341, 40 Atl. 1037, 42 L. R. A. 444.

That the county attorney, while the grand jury was interrogating witnesses, had with him in the room a regular bailiff as his stenographer taking down testimony, though he was not present while the grand jury was discussing the finding of the bill, or voting, would not invalidate the indictment.

(Tex.) Porter v. State (1913), 72 Tex. Cr. Rep. 71, 160 S. W. 1194.

The mere presence of a stenographer employed as assistant to the district attorney under P. L. 253 (1909) does not invalidate the indictment, in the absence of a showing that the defendant was prejudiced by anything done by said stenographer.

(Pa.) Commonwealth v. Hegedus (1910), 44 Pa. Super. Ct. 157.

The fact that during the investigation of a matter by a federal grand jury an assistant district attorney made notes of the testimony in shorthand and afterwards read the same to the district attorney and a special agent and attorney for the government, does not constitute a ground for the abatement of the prosecution.

(U. S.) United States v. American Tobacco Co. (1910), 177 Fed. (U. S. D. C.) 774.

A member of a grand jury may act as its stenographer, and receive extra compensation for such service from the county.

(Mich.) *People v. Lander* (1890), 82 Mich. 109, 46 N. W. 956.

Where a stenographer is selected to report the proceedings of the grand jury under the provisions of Penal Code, § 925, it is not essential that the one selected be an official reporter of the superior court, and §§ 270 and 271 of the Code of Civ. Pro. have no application.

(Cal.) *People v. Delhantie* (1912), 163 Cal. 461, 125 Pac. 1066.

A reporter appointed under Penal Code, § 925, may make a certified transcript after the grand jury has been discharged.

(Cal.) *People v. Delhantie* (1912), 163 Cal. 461, 125 Pac. 1066.

A person designated as temporary stenographer to the grand jury, in the absence of the official stenographer, is not required to be a resident of the county under Code Crim. Pro. § 952q, and such temporary stenographer, even if lacking the prescribed qualifications, is a *de facto* officer, and his presence before the grand jury when the evidence was taken would not vitiate the indictment.

(N. Y.) *People v. Coco* (1910), 25 N. Y. Cr. Rep. 288, 70 Misc. 195, 128 N. Y. S. 409.

Presence of stenographer in grand jury room by direction of district attorney, pursuant to appointment as clerk and assistant to the district attorney, *held* not to invalidate indictment.

(U. S.) *United States v. Rockefeller* (1915), 221 Fed. (U. S. D. C.) 462.

A stenographer duly appointed and sworn by the district attorney *held* not an attorney at law specially appointed by the Attorney General, and not authorized to attend grand jury sessions and take testimony for the district attorney's benefit, under Act Cong. June 30, 1906.

(U. S.) *United States v. Rubin* (1915), 218 Fed. (U. S. D. C.) 245.

### 3G Necessity for Oath.

While, under Penal Code, § 925, a stenographer appointed by the grand jury must be sworn, he need not be sworn in each case under investigation, but having once been sworn may continue in that capacity.

(Cal.) *People v. Arnold* (1911), 17 Cal. App. 68, 118 Pac. 729.

An official reporter of a superior court appointed to take the testimony at a preliminary examination before a justice of the peace need not be sworn.

(Cal.) *People v. Mullaley* (1911), 16 Cal. App. 44, 116 Pac. 88;  
*People v. Kelly* (1911), 17 Cal. App. 447, 120 Pac. 46.

When a stenographer is appointed he should be sworn, and the fact that he was sworn, or a copy of the oath he took, should appear among the records of the court.

(Pa.) *Rosenthal v. Ehrlicher* (1893), 154 Pa. 396, 26 Atl. 435.

A stenographer need not be sworn where the court accepts and adopts his report of the evidence.

(Ind.) *McCoy v. Able* (1892), 131 Ind. 417, 30 N. E. 528, 31 N. E. 453.

## 4—REMOVAL.

### A In General.

#### 4A In General.

For misconduct in office or incompetency, after proper charges have been entered upon the record and a hearing has been had, an official stenographer may be removed.

(Mo.) *State ex rel v. Slover* (1892), 113 Mo. 202, 20 S. W. 788.

Official stenographer held not liable on his bond for failure to file his notes in a case where he reported a part of the trial, and another stenographer reported the remainder and refused to file his notes.

(Miss.) *Johnson v. Ward* (1912), 102 Miss. 464, 59 So. 806.

The absence of a stenographer without the permission of the judge, for a few minutes during the trial of a case, might be a reason why he should be removed or subjected to loss of pay.

(Conn.) *Magoohan v. Curran* (1899), 71 Conn. 551, 42 Atl. 656.

When the constitution of a state provides that no person elected or appointed to any office shall hold such office without personally devoting his time to the duties thereof, a judge may remove an official stenographer who does not devote his time to his office and who leaves his duties to be performed by his deputies, although by statute the stenographer is allowed to appoint one or more deputies to assist him in the discharge of his duties.

(Mo.) *State ex rel v. Slover* (1892), 113 Mo. 202, 20 S. W. 788.

Although the statute provides that a court shall, on the application of either party, appoint a stenographer, yet it is not error justifying a reversal for the court to discharge an incompetent stenographer who is delaying the trial on account of his slowness, although no other stenographer can be obtained.

(Tex.) *Hines v. Holland* (1886), 3 Willson Civ. Cas. Tex. Ct. App., § 99.

## 5—DUTIES.

- A Attendance upon Court.
- B Reporting Testimony.
- C Furnishing Transcripts.
- D Filing Transcript of Notes.
- E Making of Transcripts.
- F Reading of notes.
- G Presumptions.

### 5A Attendance upon Court.

An official stenographer should attend court and give his time to the performance of the duties belonging to his official position.

(Conn.) *Magoohan v. Curran* (1899), 71 Conn. 551, 42 Atl. 656.

(Ga.) *Kearney v. State* (1897), 101 Ga. 803, 29 S. E. 127.

(Mo.) *State ex rel v. Slover* (1892), 113 Mo. 211, 20 S. W. 790.

While an official stenographer should be present during all the proceedings of a cause, except the argument of counsel, his absence for a few minutes unknown to the judge and unnoticed by counsel, will not render void the proceedings of court during his absence.

(Conn.) *Magoohan v. Curran* (1899), 71 Conn. 551, 42 Atl. 656.

Where the court reporter was present at the trial of a case, and took stenographic notes of those things required in civil actions by Code Civ. Pro., § 269, it was not error to dismiss him before the oral argument or decision of the case.

(Cal.) *Koyer v. Willmon* (1909), 12 Cal. App. 87, 106 Pac. 599.

An official stenographer need not be compelled by the judge to remain in attendance until the end of the trial, so that in case a dispute arises between counsel as to what the evidence was, his notes may be referred to in order to refresh the recollection of the jury.

(Ga.) *Kearney v. State* (1897), 101 Ga. 803, 29 S. E. 127.

Under a statute permitting the jury to view the premises where any material fact occurred, it is not necessary that the court stenographer be present during the view by the jury to report all that was said.

(Wyo.) *Jenkins v. State* (1913), 22 Wyo. 34, 134 Pac. 260.

When the public interest demands, a judge of the circuit court may require a stenographer appointed by him to attend a term of such court to be held by such judge in a circuit other than his own.

(S. D.) *Underwood v. Lawrence County* (1894), 6 S. D. 5, 60 N. W. 147.

### 5B Reporting Testimony.

An official stenographer should report fully and accurately all that takes place upon the trial of the action.

(Colo.) *Keady v. Owers* (1902), 30 Colo. 1, 69 Pac. 509.

(N. Y.) *Varnum v. Wheeler* (1886), 9 Civ. Pro. (N. Y.) 421; *Baker v. New York* (1897), 17 App. Div. 435, 45 N. Y. S. 164.

(Pa.) *Rosenthal v. Ehrlicher* (1893), 154 Pa. 396, 26 Atl. 435; *Woodward v. Heist* (1896), 180 Pa. 161, 36 Atl. 645; *Heyer v. Cunningham Piano Co.* (1897), 6 Pa. Super. Ct. 504.

A stenographer should take down all the testimony given.

(Ark.) *Moore v. State* (1898), 65 Ark. 330, 46 S. W. 127.

(Ill.) *People ex rel v. Raymond* (1900), 186 Ill. 407, 57 N. E. 1066.

(N. Y.) *Varnum v. Wheeler* (1886), 9 Civ. Pro. (N. Y.) 421.

(Pa.) *Rosenthal v. Ehrlicher* (1893), 154 Pa. 396, 26 Atl. 435; *Woodward v. Heist* (1896), 180 Pa. 161, 36 Atl. 645; *Heyer v. Cunningham Piano Co.* (1897), 6 Pa. Super. Ct. 504.

A stenographer should record the objections and exceptions of counsel.  
 (Ill.) *People ex rel v. Raymond* (1900), 186 Ill. 407, 57 N. E. 1066.  
 (Pa.) *Rosenthal v. Ehrlicher* (1893), 154 Pa. 396, 26 Atl. 435; *Connell v. O'Neil* (1893), 154 Pa. 582, 26 Atl. 607; *Woodward v. Heist* (1896), 180 Pa. 161, 36 Atl. 645.

A stenographer should take down the instructions or charge of the trial judge to the jury.

(Pa.) *Rosenthal v. Ehrlicher* (1893), 154 Pa. 396, 26 Atl. 435; *Heyer v. Cunningham Piano Co.* (1897), 6 Pa. Super. Ct. 504.  
 (S. D.) *Underwood v. Lawrence County* (1894), 6 S. D. 5, 60 N. W. 147.

A stenographer should take down all the rulings of the court.

(Ill.) *People ex rel v. Raymond* (1900), 186 Ill. 407, 57 N. E. 1066.  
 (Pa.) *Rosenthal v. Ehrlicher* (1893), 154 Pa. 396, 26 Atl. 435; *Woodward v. Heist* (1896), 180 Pa. 161, 36 Atl. 645.

The official stenographer should enter at length in his notes every offer to prove a fact or to use a person as a witness.

(Pa.) *Rosenthal v. Ehrlicher* (1893), 154 Pa. 396, 26 Atl. 435; *Woodward v. Heist* (1896), 180 Pa. 161, 36 Atl. 645.

An official stenographer should not note an exception merely because an objection has been made and overruled and counsel has asked him to note the exception, as the direction to note an exception should properly come from the judge. (But now see P. L., Act of May 11, 1911, requiring the official stenographer to note exceptions at request of counsel.)

(Pa.) *Rosenthal v. Ehrlicher* (1893), 154 Pa. 396, 26 Atl. 435; *Connell v. O'Neil* (1893), 154 Pa. 582, 26 Atl. 607; *Woodward v. Heist* (1896), 180 Pa. 161, 36 Atl. 645; *Heyer v. Cunningham Piano Co.* (1897), 6 Pa. Super. Ct. 504.

Upon a trial counsel insisted that every word uttered by the judge during the trial should be taken down by the stenographer, and the court refused to direct the reporter to do so. *Held*, that the request was much broader than the statute intended, and the request was properly overruled.

(Wis.) *Grant v. Ins. Co.* (1871), 29 Wis. 125; *State v. Glass* (1880), 50 Wis. 218, 6 N. W. 500.

Under Judiciary Law, § 295, requiring the official stenographer to take note of every remark of the trial judge, when the trial is by jury and neither party requests such note, the official stenographer is not bound to notice comments of the court made in a suit to quiet title tried at Special Term.

(N. Y.) *Norwegian Lutheran Church v. Krelsovitch* (1911), 147 App. Div. 108, 131 N. Y. S. 845.

Act of May 11, 1911 (P. L. 279) merely dispenses with the requirement that exceptions shall be allowed by the court, and not with the requirement that they be taken by counsel in the presence and hearing of the court and noted by the stenographer.

(Pa.) *Fornof v. Wilkingsburg Borough* (1912), 238 Pa. 614, 86 Atl. 494; *Fisher v. Leader Pub. Co.* (1913), 239 Pa. 200, 86 Atl. 776; *Foley v. Phila. Rapid Transit Co.* (1913), 240 Pa. 169, 87 Atl. 289.

The court stenographer is required to take down the testimony of the witnesses, and to file stenographic records made by him with the secretary of the court, which copy constitutes *prima facie* the "minutes" of the court and may be used on all motions for new trials, review or appeal, when "minutes" of the court may be used as such.

(Porto Rico) *People v. Santiago* (1910), 16 P. R. 446.

It is just as much the duty of the reporter to enter in his minutes the return of an improper as of a proper verdict, and he is required to note the action thereon.

(Iowa) *State v. Novak* (1899), 109 Iowa 717, 79 N. W. 465.

Under Snyder's Stat., 1909, § 5859, making it the duty of a court reporter to take down in shorthand and correctly transcribe, when required, all the proceedings upon the trial, refusal to permit such reporter to take down the examination of jurors, except those objected to, was not prejudicial.

(Okla.) Thacker v. State (1910), 3 Okla. Cr. App. 485, 106 Pac. 986.

§ 1 of Art. 7 of Laws of 1905, p. 326, gives to either party to a trial the right to demand of the court that the court stenographer shall take down in shorthand any matter that might properly be a part of the case made on appeal or proceeding in error, and if the court refuses to comply with such demand, the matter may be preserved in the record by affidavit or by any other competent evidence, and such refusal upon the part of the trial court will be ground for reversal, without regard to the merits thereof. *Held*, any party to a cause has the right to demand that the court stenographer shall be required to take down any matter which may transpire at the trial, when such matter, if objected to, is such that it may properly be made part of a case made for appeal or proceeding in error.

(Okla.) Lamm v. State (1910), 4 Okla. Cr. App. 641, 111 Pac. 1002.

A trial court should never permit a document introduced in evidence to be withdrawn unless the party so withdrawing it, at the time, leaves with the reporter a concededly correct copy of the document withdrawn; and the furnishing of such copy should be made a condition precedent for leave to withdraw the original document.

(Neb.) Macfarland v. West Side Imp. Assn. (1896), 47 Neb. 661, 66 N. W. 637.

Under Rev. Laws 1910, § 1786, accused is entitled to demand that all proceedings, including the examination of jurors and challenges, be taken down and transcribed for use in subsequent proceedings, and a refusal to comply with such request *held* prejudicial error without regard to the merits of the question.

(Okla.) Helm v. State (1915), 146 Pac. (Okla. Cr. App.) 1083.

Under Rev. Laws 1910, § 1834, held error for the county court to refuse to require stenographer to take down all objections and exceptions made in good faith during the trial.

(Okla.) Anotubby v. Pennington (1915), 148 Pac. 828.

Civ. Code 1910, §§ 4984, 4985 do not make it mandatory on the trial judge to order every case to be reported, where counsel do not agree to have it reported.

(Ga.) Peoples v. Garrison & Son (1915), 85 S. E. 119.

### 5C Furnishing Transcripts.

An official stenographer is bound to furnish to any party to a cause a transcript of his notes in such cause upon tender of his legal fees therefor.

(Colo.) Keady v. Owers (1902), 30 Colo. 1, 69 Pac. 509.

(Idaho) Raft River etc. Co. v. Langford (1898), 6 Idaho 30, 51 Pac. 1027.

(Ind.) Arcana Gas Co. v. Moore (1894), 8 Ind. App. 482, 36 N. E. 46.

(Mich.) Maynard v. Vinton (1886), 59 Mich. 155, 27 N. W. 2.

(Mont.) State v. Supple (1899), 22 Mont. 184, 56 Pac. 21; State v. Ledwidge (1902), 27 Mont. 197, 70 Pac. 511.

(Pa.) Briggs v. Erie County (1881), 98 Pa. 570.

An official stenographer must furnish a transcript to any party to the cause upon a tender of his fees, even though the judge of the court orders him not to do so.

(Colo.) Keady v. Owers (1902), 30 Colo. 1, 69 Pac. 509.

An official stenographer cannot refuse to furnish a transcript upon the ground that the party requesting the same does not need such transcript.  
(Mont.) *State v. Ledwidge* (1902), 27 Mont. 197, 70 Pac. 511.

A stenographer employed by an examiner under the provisions of the Act of May 24, 1887, is bound to take down the evidence and furnish the examiner with a transcript thereof, but it is not his duty to furnish either party or the examiner with a typewritten copy thereof.  
(Pa.) *Drinkhouse's Estate* (1892), 1 Pa. D. R. 92, 11 C. C. R. 145.

A stenographer employed by private parties to take the evidence at a hearing, but who is treated by all parties as an official stenographer, must furnish a transcript of the evidence to interested parties, and cannot deny that he was an official stenographer.  
(Neb.) *Mockett v. State* (1903), 70 Neb. 518, 97 N. W. 588.

A transcript of evidence taken in a homicide case by a stenographer appointed by the board of coroners of the city of New York under a resolution directing the stenographer to make transcripts in all homicide cases, to be turned in to the board of coroners and filed in the district attorney's office, is a transcript made for the use of the district attorney's office.  
(N. Y.) *Baker v. New York* (1897), 17 App. Div. 435, 45 N. Y. S. 164.

A reporter is not under any official duty to transcribe testimony, upon demand of defendant, where one on trial under indictment for felony was convicted of misdemeanor, where defendant makes no offer to pay reporter.  
(Ga.) *Rozar v. McAllister* (1912), 138 Ga. 72, 74 S. E. 792.

Mandamus will not lie to compel the official stenographer of a city court to furnish one convicted of misdemeanor in that court a transcript of notes taken on the trial without having first paid therefor.  
(Ga.) *Bowles v. Malone* (1912), 139 Ga. 115, 76 S. E. 854.

It is the duty of the circuit court stenographer, subject to the direction of the court, to furnish to the attorney general without charge a copy of the transcript of evidence in a law action instituted for the use of the territory.

(Hawaii) *In re Andrews* (1905), 16 Hawaii 483.

The attorney general is not entitled to receive free of cost a transcript of the evidence and proceedings in a case tried in the court of land registration in which the territory was a party by reason of the fact that the stenographer who reported the case was an official stenographer of the circuit court of the first circuit, such stenographer not having been assigned the duty of acting as such reporter under § 1692 of the Revised Laws.  
(Hawaii) *In re petition of Hawaii* (1911), 20 Hawaii 699.

The copy of the notice given the stenographer to furnish a copy of her notes need not, under Laws 1910, c. 111, amending Code 1906, § 797a, be filed with the clerk of the court within 30 days.

(Miss.) *New Orleans & N. E. R. Co. v. Catts* (1915), 68 So. 483.

## 5D Filing Transcript of Notes.

An official stenographer must file a transcript of his notes.

(Iowa) *Hampton v. Moorhead* (1883), 62 Iowa 91, 17 N. W. 301.  
*Manatt v. Scott* (1898), 106 Iowa 203, 76 N. W. 717.

(Mich.) *Bell v. Pate* (1882), 48 Mich. 640, 11 N. W. 113; *Detroit etc. R. R. Co. v. Hayt* (1884), 55 Mich. 347, 21 N. W. 367, 911; *Thurstin v. Luce* (1886), 61 Mich. 486, 28 N. W. 670; *Langley v. Hill* (1886), 63 Mich. 271, 29 N. W. 709.

(N. D.) *Kaeppler v. Pollock* (1898), 8 N. D. 59, 76 N. W. 987.

(Pa.) *Briggs v. Erie County* (1881), 98 Pa. 570.

In the absence of a statute requiring the same, an official stenographer in a criminal case when the accused is discharged, need not file his notes.

(Cal.) *Mattingly v. Nichols* (1901), 133 Cal. 332, 65 Pac. 748.

When a motion is made for a new trial on the "minutes of the court" the official stenographer's notes need not be filed before the hearing of such motion.

(S. D.) *Distard v. Shanklin* (1898), 11 S. D. 1, 75 N. W. 205.

On a motion for a new trial on the judge's minutes a transcript of the stenographic notes which the moving party has paid for, need not be filed with the clerk.

(N. Y.) *Schlotterer v. Brooklyn & N. Y. Ferry Co.* (1905), 102 App. Div. 363, 92 N. Y. S. 674.

As questions as to the accuracy of the transcript may arise, the shorthand notes should also be filed, so that a correct determination of any question of the accuracy of the transcript may be had.

(Iowa) *Lowe v. Lowe* (1875), 40 Iowa 220.

The withdrawal of the shorthand notes from the office of the clerk and possession by the reporter, an officer of the court, for the purpose of making a transcript, is a lawful one and for a lawful purpose, and when they are returned no refiling is necessary to preserve their status as a record in the case.

(Iowa) *Hamill v. Schlitz Brewing Co.* (1913), 165 Iowa 266, 143 N. W. 99.

Under § 869 of the Penal Code the requirement that the transcript be filed in ten days is merely directory, and a filing within a reasonable time is sufficient.

(Cal.) *People v. Grundell* (1888), 75 Cal. 301, 16 Pac. 544.

The requirement of § 4670 that the transcript be filed within ten days with the clerk is merely directory.

(Utah) *State v. Vance* (1910), 38 Utah 1, 110 Pac. 434.

Under § 4883 Comp. Laws 1888, providing that in homicide cases the testimony of the preliminary examination, when taken by a reporter, shall be transcribed and filed with the clerk of the district court within ten days after the close of the examination, the failure of the reporter to file the transcript does not prevent defendant from being brought to trial, where he did not claim that he was prejudiced by not having a transcript of the reporter's notes, and did not ask for a continuance in order to secure them; and the trial under such circumstances is not a trial without due process of law.

(Utah) *People v. Thiede* (1895), 11 Utah 241, 39 Pac. 837; Affirmed, 159 U. S. 510.

The question of the extension of time within which to file a transcript is within the discretion of the judge under § 4434, Rev. Codes, as amended by Ch. 119, Laws of 1911, and a reporter when he finds that he is unable to make the transcript within the time granted should apply to the court for an order for additional time.

(Idaho) *Fischer v. Davis* (1913), 24 Idaho 217, 133 Pac. 910.

Provided that notice is given to the stenographer within 30 days after the adjournment of court, as per Ch. 111, Acts 1910, the stenographer's notes will not be stricken for any cause whatever, unless incorrect in some material particular.

(Miss.) *Miss. Cent. R. Co. v. Chambers* (1913), 103 Miss. 400, 60 So. 562.



A verbal direction of the court to the reporter to transcribe his notes and file them with the clerk, is a sufficient order under § 274 of the Code of Civ. Pro.

(Cal.) Taylor v. McConigle (1898), 120 Cal. 123, 52 Pac. 159.

Courts can only designate the time within which a transcript of evidence taken in a case by a stenographer shall be filed, during the pendency of the case, and before the entry of final judgment.

(Ind.) Drake v. Everson (1900), 155 Ind. 47, 57 N. E. 533.

A stenographer's transcript must be filed in the office of the clerk before it can be incorporated in the bill of exceptions.

(Ind.) Beatty v. Miller (1896), 146 Ind. 231, 44 N. E. 8.

There is a presumption that an official stenographer has filed his notes.

(Iowa) Hampton v. Moorhead (1883), 62 Iowa 91, 17 N. W. 202;  
Manatt v. Scott (1898), 106 Iowa 203, 76 N. W. 717.

On a reference action to foreclose a mortgage when the stenographer's fees have been taxed by plaintiff, the court may order the plaintiff when the stenographer's notes are in his possession, to file the same with the county clerk, even though the property has been sold and the costs fully paid.

(N. Y.) Horrocks v. Thompson (1882), 27 Hun (N. Y.) 144.

Where the minutes of a stenographer employed and paid by the plaintiff are by common consent used on the trial by the referee, and by him in preparing his report, and are the only ones taken on the trial, such original minutes cannot be taken by plaintiff's attorney as his and the referee and court thereby deprived of the use of the only official record kept upon the trial.

(N. Y.) Woodworth v. Seymour (1882), (N. Y. Sup. Ct., Gen. Term, 3rd Dept.) 16 Weekly Digest 43.

## 5E Making of Transcripts.

A court may order an official stenographer, in transcribing his notes, to put the same into narrative form.

(W. Va.) Cummings v. Armstrong (1890), 34 W. Va. 1, 11 S. E. 742.

A court stenographer may be compelled to prepare a transcript of his notes in narrative form.

(Tex.) Routledge v. Elmendorf (1909), 54 Tex. Civ. App. 174, 116 S. W. 156.

Where a bankrupt's examination before a special master was taken by a stenographer and a transcript made, it was the bankrupt's duty to sign the transcript, though he now claims that certain of his answers were incorrect by reason of his misunderstanding the question, or not being correctly informed when he answered; he being entitled only to make such entry on the record before his signature and jurat.

(U. S.) In re Samuels (1914), 213 Fed. (C. C. A.) 447.

A stipulation that the stenographer taking the deposition may sign the name of the witness and transmit the same to court for use, waives the requirement of Laws of 1905 requiring the deposition to be read to the witness and subscribed by him.

(Utah) Groot v. O. S. L. R. Co. (1908), 34 Utah 152, 96 Pac. 1019.

A witness whose deposition has been taken before an officer cannot be committed for contempt in refusing to sign it, where he claims that it is inaccurate, but is willing to sign it when the errors pointed out by him have been corrected; nor in such case can his deposition be retaken on a

new subpoena, there being no claim of an omission under the former subpoena, other than the signature of the witness.

(Ohio) *In re Hafer* (1901), 65 Ohio S. 170, 61 N. E. 702.

Exhibits offered in evidence need not be incorporated in or attached to the transcript.

(Utah) *Bingham Livery & Tr. Co. v. McDonald* (1910), 37 Utah 457, 110 Pac. 56.

All fees earned by the reporter or his deputy under the provisions of the reporter statutes, which include R. C. 3980 and the following seven sections, must be turned into the state treasury, and the reporter cannot evade that requirement by reducing the stenographic record to narrative form.

(Idaho) *Keane v. Pittsburg Lead Min. Co.* (1910), 18 Idaho 711, 112 Pac. 214.

Under Supreme Court Rule 7 (123 Pac. XI) the court on appeal in equity need not review the evidence where it is incorporated in the transcript in narrative form.

(Mont.) *Gilmore v. Ostronich* (1913), 48 Mont. 305, 137 Pac. 378.

### 5F Reading of Notes.

An official stenographer cannot be compelled by a judge to read his notes when there is no provision in the statute awarding him compensation for so doing.

(S. D.) *Myers v. Campbell* (1899), 11 S. D. 433, 78 N. W. 353.

An official stenographer may be required to read his notes although the statute does not provide compensation to him for so doing, as he knows when he accepts the office that such service may be required of him, and he therefore takes the office subject to that burden.

(N. D.) *Kaepler v. Pollock* (1898), 8 N. D. 59, 76 N. W. 987.

When requested by the judge an official stenographer must read his notes.

(N. D.) *Kaepler v. Pollock* (1898), 8 N. D. 59, 76 N. W. 987.

(R. I.) *Alexander v. Gardiner* (1882), 14 R. I. 15.

An official stenographer is not by statute made an umpire to decide disputed questions as to what the testimony at the trial was, either for the information of the jury or for the purpose of the bill of exceptions.

(Mo.) *Padgitt v. Moll* (1900), 159 Mo. 143, 60 S. W. 121, 52 L. R. A. 854, 81 Am. St. Rep. 358.

An official stenographer may be required by the court to assist the solicitor general by reading questions to the jurors upon their *voir dire* examination, but this duty does not give the stenographer the right to accept or reject jurors.

(Ga.) *West v. State* (1887), 79 Ga. 773, 4 S. E. 325.

It is competent for the judges of such courts as employ official stenographers to cause portions of their notes of the evidence to be read over to the jury in open court, if requested by them, and also to cause typewritten transcripts of desired portions of the testimony, or even the whole of it, to be submitted to the jury if they so request. The exercise of this power must necessarily rest to a great extent in the discretion of the trial judge.

(Conn.) *State v. Rubaka* (1909), 82 Conn. 60, 72 Atl. 566.

The court must decide whether a question involves a false assumption of fact, and if the court's statement of the facts is doubted, counsel should appeal to the stenographer's minutes.

(Conn.) *Nesbit v. Crosby* (1902), 74 Conn. 555, 51 Atl. 550.

**5G Presumptions.**

The duties of an official court stenographer are prescribed by statute, and are presumed to be known by all people.

(Ind.) *Miller v. Palmer* (1900), 25 Ind. App. 357, 58 N. E. 213.

In the absence of evidence to the contrary, it will be presumed that an official stenographer performs his duties.

(Iowa) *State v. Smith* (1896), 99 Iowa 26, 68 N. W. 428; *Manatt v. Scott* (1898), 106 Iowa 203, 76 N. W. 717.

There is a presumption that an official stenographer has filed his notes.

(Iowa) *Hampton v. Moorhead* (1883), 62 Iowa 91, 17 N. W. 202; *Manatt v. Scott* (1898), 106 Iowa 203, 76 N. W. 717.

When an oral charge has been given, the presumption is, in the absence of any statement in the record to the contrary, that the reporter took it down as required by statute.

(Utah) *State v. Kessler* (1897), 15 Utah 142, 49 Pac. 293.

There is a presumption that a stenographer who takes shorthand notes at a trial did so under order of the court.

(Colo.) *Keady v. Owers* (1902), 30 Colo. 1, 69 Pac. 509.

If the record shows that a stenographer was sworn in a cause to report the evidence, it will be presumed that he was appointed.

(Ind.) *Pitman v. Marquardt* (1898), 20 Ind. App. 431, 50 N. E. 894.

Where an official reporter took down the deposition of a witness at a preliminary examination, it will be presumed that he was duly qualified by his official oath to faithfully discharge his duties, and it was not necessary that he be sworn at the preliminary hearing.

(Cal.) *People v. Kelly* (1911), 17 Cal. App. 447, 120 Pac. 46.

## 6—COMPENSATION.

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### 6A 1—Amount—Limited to Sum Allowed by Statute.

An official stenographer can only be given such compensation as is prescribed by statute, when a statute exists in regard thereto.

(N. Y.) *Matter of Tinsley* (1882), 90 N. Y. 231; *McCarthy v. Bonyng* (1884), 12 Daly (N. Y.) 356.

While a stenographer might be allowed to recover for a copy of the minutes supplied during the trial to defendant's counsel if the conditions permitting such transcript subsequently arose, the fact that he thus supplied them out of order cannot be made the basis for a double charge.

(N. Y.) *Moynahan v. City of New York* (1912), 205 N. Y. 181, 98 N. E. 482.

A court stenographer who charges for a transcript of testimony in excess of the amount prescribed by statute is subject to an action for treble damages, under the Public Officers Law, § 89. And an attorney who paid such overcharge may recover the same in an action in his own name.

(N. Y.) *Hale v. McDermott* (1912), 78 Misc. 52, 137 N. Y. S. 975.

Where a referee employed a stenographer in taking testimony before him, the referee cannot increase his fees beyond the amount allowed him

by statute for taking and transcribing testimony, nor add thereto the amount of the stenographer's bill.

(Wash.) *Park v. Mighell* (1892), 3 Wash. 737, 29 Pac. 556.

If the sum to be paid an official stenographer for furnishing transcripts is prescribed by statute, an agreement to pay a higher price for copies furnished more quickly will not be upheld.

(N. Y.) *McCarthy v. Bonyng* (1884), 12 Daly (N. Y.) 356.

One appointed official court stenographer by the judge, though for a single case only, under Sess. Laws, 1899, is, in the discharge of his duties, a public officer, so that a contract of the parties to pay him more than provided by statute for transcribing the testimony is void as against public policy.

(Utah) *Dull v. Mammoth M. Co.* (1905), 28 Utah 467, 79 Pac. 1050.

Allowing a stenographer 25 cents a page for transcript, instead of 15 cents a folio, when it is not claimed that the amount allowed is greater than would have been allowed at the folio rate, is not an error.

(Ky.) *Polsgrove v. Walker* (1904), 26 Ky. Law Rep. 938, 82 S. W. 979.

An official stenographer is not entitled to recover compensation for more than 120 days' service when the statute concerning his compensation provides that he shall receive \$10 a day, but that the whole compensation shall not exceed \$1,200 a year. If, however, the compensation for writing out notes in longhand when ordered by the court increased his total compensation for the year to a sum in excess of \$1,200, he is entitled to recover his total compensation from the county.

(Pa.) *Lehigh County v. Meyer* (1883), 102 Pa. 479.

Under Stat. 331, subs. 17, authorizing the county court of certain counties to appoint a stenographer, and providing for his compensation, a county court within the act may appoint a stenographer and fix her salary; and, in the absence of any allegation to the contrary, it may be presumed that the fiscal court in the payment of her salary used funds collected for that purpose, and a taxpayer could not sue the stenographer, members of the fiscal court and the county judge to recover the salary paid.

(Ky.) *Woodruff v. Goldbach* (1913), 153 Ky. 411, 156 S. W. 115.

Stenographers who are allowed an annual salary cannot be paid a per diem allowance while attending court.

(Mich.) *Stockwell v. Supervisors of Genesee* (1885), 56 Mich. 221, 23 N. W. 25.

A master in chancery has no power to require a litigant to pay a stenographer for taking and transcribing testimony, in addition to the fees allowed him by statute for performing the same duty, and to make such payment a condition precedent upon which he will consider the testimony.

(Ill.) *Nutriment Co. v. Geo. Green Lumber Co.* (1902), 195 Ill. 324, 63 N. E. 152.

The compensation to be paid official stenographers is generally prescribed by statute.

(N. Y.) *Wright v. Nostrand* (1879), 58 How. Pr. (N. Y.) 184; *Guth v. Dalton* (1880), 58 How. Pr. (N. Y.) 289; *Baker v. N. Y.* (1897), 17 App. Div. 435, 45 N. Y. S. 164.

(Wyo.) *Chosen Friends etc. League v. Otterson* (1897), 7 Wyo. 89, 50 Pac. 194.

## 6A 2—Amount—Construction of statutes as to.

When on the same day two laws are passed by the legislature, the first of which provides a certain salary for an official stenographer, and the

second of which provides that the circuit judge shall fix the compensation, the two acts will be held to be concurrent, and the stenographer will be entitled to the compensation set out in the first act, unless the circuit judge fixes a different rate.

(N. J.) *Knigh v. Ocean County Freeholders* (1887), 49 N. J. Law 485, 12 Atl. 625.

Under a statute requiring a stenographer to furnish transcripts to either party upon payment of the fees allowed by law, while another statute provides that ten cents a folio shall be paid for transcripts ordered by the judge for his own use, the stenographer's fee is ten cents a folio for furnishing a transcript to a party.

(N. Y.) *Guth v. Dalton* (1880), 58 How. Pr. (N. Y.) 289.

Under Laws of 1907, c. 603, the right to fix the salary of stenographers of the municipal courts of the City of New York rests in the Board of Estimate and Apportionment acting upon the recommendation of the board of justices, but such recommendation is not controlling.

(N. Y.) *People ex rel v. Board of Estimate* (1911), 72 Misc. 456, 131 N. Y. S. 294.

Under the Act of May 1, 1907, P. L. 135, a duly appointed stenographer of the Court of Common Pleas is entitled to have his fees paid by the county in a divorce case or in a case involving an application for a charter, where the court in the exercise of its discretion has directed that the fees shall be paid by the county.

(Pa.) *Russell v. Philadelphia* (1911), 48 Pa. Super. Ct. 622, Affirmed (1912), 236 Pa. 560, 84 Atl. 1101.

Sess. Laws, ch. 69, § 23, providing that stenographers for the district court and for the superior court shall receive an annual salary to be paid out of the state treasury in the same manner as salaries of district judges, does not constitute an appropriation for the payment of salaries of stenographers for the district court; and by reason of Comp. Laws, 1909, § 2527, it is unlawful for the state auditor to issue a warrant for the salary of a stenographer for the district court for the months of July to October, 1911, inclusive, since there is no appropriation by law for the payment of such salary.

(Okla.) *Meyer v. Clift* (1912), 31 Okla. 793, 123 Pac. 1042.

In a statute providing compensation to stenographers for "taking down the testimony," the taking down of the testimony includes the transcribing of the notes into ordinary writing.

(Ga.) *Henderson v. Parry* (1893), 93 Ga. 775, 21 S. E. 144.

A court stenographer is not obliged to furnish a copy of the minutes written out from the notes of his deceased predecessor at the rates provided for by Judiciary Law, §§ 299-303.

(N. Y.) *Griffin v. Flank* (1913), 79 Misc. 415, 140 N. Y. S. 122.

Punctuation marks are not figures within the meaning of a statute providing for stenographer's compensation at a certain amount per folio of one hundred words, counting figures as words.

(N. Y.) *In re Murtaugh* (1911), 71 Misc. 513, 128 N. Y. S. 850.

The compensation of a stenographer is to be determined only by the number of words transcribed, and not by the number of punctuation marks used in order to make the transcript intelligible.

(Colo.) *Walsh v. Jackson* (1905), 33 Colo. 454, 81 Pac. 258.

Where a deposition was taken in shorthand, which was signed by the witnesses and afterwards transcribed, the notary public, under § 1741, Stats.

1903, and Act March 26, 1904 (No. 121, p. 298) was entitled to a fee for transcribing in addition to his per diem for taking the deposition.

(Ky.) *Reuscher v. Attorney General* (1906), 30 Ky. Law Rep. 109, 97 S. W. 397.

Under § 7, Act of May 1, 1907 (P. L. 135) typewritten copies of the stenographer's report cannot be furnished to parties at public expense, except upon order of the court in each case, unless the case has been appealed. A general order of the court is invalid, since the court cannot divest itself of that discretion which it is bound to exercise in each case.

(Pa.) *Clift v. Philadelphia* (1909), 41 Pa. Super. Ct. 638.

Under § 275 of Code of 1897, a judge of the superior court may appoint a shorthand reporter, and it is further provided that the provisions relating to shorthand reporters and their duties in district courts shall govern as far as possible, except that the compensation shall not exceed \$5.00 a day for the time actually employed. *Held*, that the reporter of the superior court is entitled to compensation for all days that he is under the control and direction of the court and is required to attend court under the order of the judge, and that he is not restricted to payment for the time he is actually engaged in reporting testimony.

(Iowa) *Ferguson v. Pottawattamie County* (1904), 126 Iowa 108, 101 N. W. 733.

Under the Act of 1870, where evidence is taken by a stenographer before a circuit court commissioner in criminal examinations, the board of supervisors are the final judges of proper compensation.

(Mich.) *Pistorious v. County Supervisors* (1883), 51 Mich. 125, 16 N. W. 262.

The compensation of a stenographer for taking testimony before an examining magistrate, which by law is to be determined by the magistrate, but shall not exceed the compensation of reporters in the superior court, which is \$10, is not affected by an unconstitutional amendment making the compensation of stenographers in the superior court depend on a salary to be fixed by the judge.

(Cal.) *McAllister v. Hamlin* (1890), 83 Cal. 361, 23 Pac. 357.

Code of Civ. Pro., § 274, relating to compensation of court reporters, does not authorize payment of their traveling expenses in civil cases.

(Cal.) *Irrgang v. Ott* (1908), 9 Cal. App. 440, 99 Pac. 528.

When the stenographer of a superior court is directed by the presiding judge to take down the evidence and other proceedings in a civil case, and does so, the judge has authority under Civil Code 1895, § 4447, to allow him compensation at the rate of ten cents per hundred words, for his services in merely taking down such proceedings in shorthand, and to prescribe by whom and in what manner such compensation shall be paid.

(Ga.) *Seaboard Airline Ry. Co. v. Memory* (1906), 126 Ga. 183, 55 S. E. 15.

The stenographer, under Civil Code 1895, § 4446, is entitled to compensation not only for taking down the evidence, but also for taking down the charge of the court and the other proceedings in the case which the law requires to be taken down.

(Ga.) *Seaboard Airline Ry. Co. v. Memory* (1906), 126 Ga. 183, 55 S. E. 15.

### 6A 3—Amount—In Absence of Statute.

If a court is authorized to appoint a stenographer and the statute does not provide for his compensation, he is entitled to receive a reasonable compensation.

(Nev.) *Washoe County v. Humboldt County* (1880), 14 Nev. 123.

On a reference occupying twelve full hearings, the referee taking 555 pages of testimony and spending twelve days in reading the minutes and preparing his report; *held* that \$500 for the referee and \$428 stenographer's fees were not excessive.

(N. Y.) *Dollard v. Koronsky* (1909), 133 App. Div. 896, 113 N. Y. S. 793.

In the absence of any statute fixing compensation for the taking and transcribing of testimony in a judicial proceeding, the stenographer is entitled to reasonable compensation, and an allowance of twenty cents for one hundred words, including figures, but excluding punctuation, is reasonable.

(N. Y.) *In re Murtaugh* (1911), 71 Misc. 513, 128 N. Y. S. 850.

A stenographer's compensation in a case before an auditor is not the subject of contract. It is such as shall be directed by the court and fixed by the auditor within the limitations prescribed by the act. When such compensation has been thus fixed by the auditor and approved by the court below, and the exercise of its power has been discreetly used, the appellate court has no disposition to interfere even if it had the power.

(Pa.) *Taylor's Estate* (1896), 3 Pa. Super. Ct. 275.

A party contracting to furnish the testimony at a hearing before the Interstate Commerce Commission at a specified sum per folio is entitled to recover, though the transcript of the testimony was returned to the party within a reasonable time; and such contract is binding on both parties as against the objection that one of them did not understand the meaning of the word "folio;" but if the minds of the parties did not meet as to the meaning of such word, the party rendering the service could recover the reasonable value thereof.

(Tex.) *Law Reporting Co. v. Texas Grain & Elevator Co.* (1914), 168 S. W. (Tex. Civ. App.) 1001.

Rev. Codes, § 6248, providing if proper rooms in which to hold the Supreme Court and for the accommodation of its officers are not provided the Supreme Court may make provision therefor, furnishes a mode, in the absence of other statutes, by which provision may be made for a court stenographer and for his compensation.

(Mont.) *State v. Cunningham* (1909), 39 Mont. 165, 101 Pac. 962.

For attending before an examiner under the Act of May 24, 1887, the sum of \$5.00 a day is a reasonable compensation.

(Pa.) *Drinkhouse's Estate* (1892), 1 Pa. Dist. R. 92, 11 C. C. R. 145.

Where, on an accounting before a commissioner, a deposition was taken by a stenographer, a per diem fee and an allowance for transcribing should be made for the stenographer's services.

(Ky.) *Co-Operative Mfg. Co. v. Rusche* (1907), 30 Ky. Law Rep. 790, 99 S. W. 677.

The compensation of a stenographer appointed in a Federal Court as a special examiner in chancery, when no special contract in regard thereto is made and when there is no statute covering the same, should be allowed at the same rate as stenographer's charges are allowed in the state courts.

(U. S.) *Indianapolis Water Co. v. American Straw Board Co.* (1895), 65 Fed. (C. C.) 534.

When a judge of the city court is allowed by statute to appoint a stenographer on the same terms as the circuit court, and there is no direct provision for his compensation, a stenographer so appointed shall receive the same compensation and be paid in the same manner as a stenographer of the circuit court.

(Ill.) *Andel v. People* (1902), 106 Ill. App. 558.



A stenographer employed by a judge of the Common Pleas to make typewritten copies of his opinions rendered in cases pending before him, and also to take and transcribe testimony in the Juvenile Court, is entitled to recover reasonable compensation from the county, though not provided for by special appropriation, or by Act of the Assembly.

(Pa.) Rosenthal v. Luzerne County (1903), 12 Pa. D. R. 738, 11 Kulp 133.

#### 6A 4—Amount—When fixed by Court.

The compensation of official stenographers is often fixed by the court under authority conferred upon it by statute.

(Cal.) Ex parte Reis (1883), 64 Cal. 233, 30 Pac. 806; McAllister v. Hamlin (1890), 83 Cal. 361, 23 Pac. 357.

(Ill.) People ex rel v. Raymond (1900), 186 Ill. 407, 57 N. E. 1066.

(N. J.) Knight v. Ocean County Freeholders (1887), 49 N. J. Law 485, 12 Atl. 625.

(Tex.) Cox v. Patten (1902), 66 S. W. (Tex. Civ. App.) 64.

The superior court of San Francisco has power to fix and order paid the compensation of its reporters in a criminal case.

(Cal.) Ex parte Reis (1883), 64 Cal. 233, 30 Pac. 806; People v. Becker (1884), 66 Cal. xviii, 4 Pac. 942.

#### 6A 5—Amount—In General.

When an official stenographer is removed by a judge because he fails to personally attend to his duties, he cannot recover compensation for services between the time the charges are preferred and the order for his removal founded on the charges is made, when during such time he neither attended nor offered to attend court except by a deputy.

(Mo.) State ex rel v. Slover (1892), 113 Mo. 211, 20 S. W. 790.

A claim of each of said commissioners for the amount expended for the services of a stenographer to report the proceedings of the commission must be disallowed.

(N. Y.) Matter of Board of Water Supply (1912), 78 Misc. 436, 139 N. Y. S. 595.

Under a statute giving a stenographer a salary for each week or part of a week in which court is held, an official stenographer of a circuit court who is present when court is opened, is entitled to a week's salary, although upon the petition of the citizens the term is pretermitted.

(Miss.) Wood v. Chickasaw Co. (1905), 85 Miss. 120, 37 So. 642.

Under § 313 of the old code an oral agreement between parties to a reference entered by the stenographer upon his minutes allowing the referee to fix his own compensation was not an agreement in writing for any other rate than that prescribed.

(N. Y.) First Nat. Bank v. Tamajo (1879), 77 N. Y. 476.

Large stenographer's fees are not to be commended.

(N. Y.) Halbert v. Gibbs (1897), 16 App. Div. 126, 45 N. Y. S. 113.

#### 6A 6—Amount—Per Diem.

An official stenographer is only entitled to the per diem allowance certified to by the judge for attendance in taking testimony, and furnishing a transcript to the parties. He is not entitled to compensation for transcript furnished to the court.

(N. J.) Knight v. Chosen Freeholders of Ocean County (1886), 48 N. J. Law 70, 3 Atl. 344.

A stenographer is not entitled to pay for attendance before a referee on days when adjournments are had, unless there is a special agreement to that effect.

(N. Y.) *Matter of Maritch* (1899), 29 Misc. 270, 61 N. Y. S. 237;  
*Blanck v. Spies* (1900), 31 Misc. 19, 62 N. Y. S. 1039.

On a reference the stenographer was permitted to take the testimony upon the typewriter and thus prolong the hearing and increase the per diem of both the referee and himself largely in excess of what it otherwise would have been. The court denounced it as a practice that finds no sanction or authority in the law and as in open and flagrant violation of the rights of litigants whose disbursements are necessarily large enough without being increased by constructive and unauthorized fees.

(Or.) *Thomas v. Thomas* (1893), 24 Or. 251, 33 Pac. 565.

#### 6A 7—Amount—For Furnishing Transcripts.

An official stenographer is only entitled to the per diem allowance certified to by the judge for attendance in taking testimony, and furnishing a transcript to the parties. He is not entitled to compensation for transcript furnished to the court.

(N. J.) *Knight v. Chosen Freeholders of Ocean County* (1886), 48 N. J. Law 70, 3 Atl. 344.

When a criminal case results in conviction, a judge of the superior court may allow compensation to a stenographer for the time occupied in making a transcript, but he cannot do so if there is a mistrial.

(Ga.) *Ragland v. Palmer* (1894), 93 Ga. 777, 21 S. E. 145.

A stenographer who is entitled to a per diem for taking testimony, is not entitled in addition thereto to be paid by the follo for transcribing such testimony.

(Ga.) *Henderson v. Parry* (1893), 93 Ga. 255, 20 S. E. 107.

A stenographer is not entitled to his fees for a transcript of the evidence taken upon a preliminary examination of a person charged with larceny, where the accused was discharged.

(Cal.) *Mattingly v. Nichols* (1901), 133 Cal. 332, 65 Pac. 748.

In a criminal case where there is no conviction a transcript of the evidence need not be recorded, and the process of taking down the testimony is therefore complete without transcribing the notes, and the stenographer's compensation should be limited to the time occupied in taking down the evidence.

(Ga.) *Henderson v. Parry* (1893), 93 Ga. 775, 21 S. E. 144.

Although the constitution of a state provides that "a writ of error shall be a writ of right in all cases of felony," nevertheless an official stenographer may be allowed by statute to charge a fee for a transcript of the record in such a case.

(Neb.) *State v. Moore* (1878), 8 Neb. 22.

A stenographer employed by the accused to take down the evidence and the bills of exception cannot be compelled to furnish a copy of his notes without being paid therefor.

(La.) *State v. Vicknair* (1906-7), 118 La. 963, 43 So. 635.

#### 6A 8—Amount—Mileage, When Allowed.

A stenographer, when required by the judge appointing him to attend court outside of the circuit for which he is appointed, is entitled to recover mileage.

(S. D.) *Underwood v. Lawrence Co.* (1894), 6 S. D. 5, 60 N. W. 147.

Laws of 1907, Ch. 74, § 15, allowing a court reporter his actual traveling expenses in attending the district court away from his official residence, authorizes an allowance for his board and lodging at the place where the court is held.

(Ariz.) Van Veen v. County of Graham (1910), 13 Ariz. 167, 108 Pac. 252.

Under a statute allowing the official stenographer of a circuit court in counties having 45,000 inhabitants or less, all sums actually expended by him in necessary hotel and traveling expenses while attending any term of court or while engaged in going to and from such term of court, an official stenographer cannot be allowed pay for railroad fare which he paid in work for the attorney of the road instead of in money.

(Mo.) State ex rel v. Woodside (1905), 112 Mo. App. 451, 87 S. W. 8.

Under the laws of 1899, p. 111, a district judge could contract to pay mileage to his stenographer at ten cents a mile, to be certified to the state auditor. The constitution provides for a board of examiners. R. S. 1898, § 946, provides that the state auditor cannot draw warrants until approved by the board of examiners. *Held*, that the claim for mileage was one that must be approved by the Board of Examiners.

(Utah) State ex rel v. Edwards (1908), 33 Utah 243, 93 Pac. 720.

Under the laws of 1907 provision was made for payment of mileage to officers for the amount actually paid out. *Held*, not to apply to contracts for the payment of stenographers' mileage authorized by §§ 721-2, Comp. Laws 1907, and that stenographers should receive ten cents a mile traveled without reference to the amount actually paid out. The limitation in the appropriation bill to amount actually paid out did not modify or repeal § 722 supra.

(Utah) State ex rel v. Cutler (1908), 34 Utah 99, 95 Pac. 1071.

Code of Civ. Pro., § 274, relating to compensation of court reporters, does not authorize payment of their traveling expenses in civil cases.

(Cal.) Irgang v. Ott (1908), 9 Cal. App. 440, 99 Pac. 528.

#### 6A 9—Amount—Facts Considered in Determining.

In an action by an official court stenographer for services in making a transcript of his notes, evidence that the transcripts were also used in a second trial of the same case is admissible.

(Ind.) Miller v. Palmer (1900), 25 Ind. App. 357, 58 N. E. 213.

In determining the compensation to be paid for the services of an official court stenographer in transcribing his notes, evidence as to how much defendant paid his attorney is inadmissible.

(Ind.) Miller v. Palmer (1900), 25 Ind. App. 357, 58 N. E. 213.

In an action by a stenographer to compel the payment of his fees by the county, as required by statute, the fact that his services have been paid by the Goebel Reward commission is immaterial.

(Ky.) Polsgrove v. Walker (1904), 26 Ky. Law Rep. 938, 82 S. W. 979.

In an action by an official court stenographer for services rendered in making a transcript of his notes, evidence of an agreement between defendant and his attorney, to the effect that the attorney should pay all expenses, and that the sum defendant had paid another reporter for services to his attorney was deducted from his attorney's fee is inadmissible.

(Ind.) Miller v. Palmer (1900), 25 Ind. App. 357, 58 N. E. 213.

If a referee finds it necessary to employ a stenographer, and there is no statutory provision for his compensation, the court may consider that fact in determining the compensation to be paid to the referee.

(Okla.) Cummins v. Robinson (1894), 2 Okla. 494, 37 Pac. 1064.

In an action to compel the fiscal court to obey an order of the circuit court in regard to the payment of a person appointed official stenographer to take the evidence and make a transcript, an objection that such person is not the regular official stenographer, and that if the claim was paid the allowance for stenographic work might exceed \$1,200, the limit allowed by statute to be paid the official stenographer, unless such complaint is made by the official stenographer, it is of no value.

(Ky.) Polsgrove v. Walker (1904), 26 Ky. Law Rep. 938, 82 S. W. 979.

To sustain an implied contract to pay a stenographer twenty-five cents a folio for transcribing testimony upon a reference, he must show that his services were reasonably worth that sum.

(N. Y.) Eckstein v. Schleimer (1909), 62 Misc. 635, 116 N. Y. S. 7.

Though no agreement is entered on the record, when a stenographer is employed by the auditor without objection, and makes a transcript for the use of the exceptants, and his services have resulted in diminishing the per diem allowance of the auditor to an extent greater than his own charge, an objection to the allowance of his fees will not be sustained.

(Pa.) Pearson's Est. (1901), 8 North Co. (Pa.) 23.

The consent of the parties interested may fairly be inferred from their failure to object, and their acceptance and use of copies of the stenographer's notes.

(Pa.) Commonwealth v. Lancaster Co. etc. Ins. Co. (1897), 1 Dauph. Co. (Pa.) 222, 16 Lanc. L. Rev. 60.

Bankruptcy Act 1898, § 38, subd. 5, does not apply to hearings on the examination of the bankrupt where the testimony of an alleged bankrupt was taken before a special commissioner at the request of the receiver by a public law stenographer who charged twenty cents a folio for the testimony, and the bill could only be allowed and paid out of the bankrupt's estate after its approval by the receiver and proof that the examination was necessary and resulted in benefit to the estate.

(U. S.) In re Stark (1907), 155 Fed. (D. C.) 694, 18 Am. B. R. 467.

#### 6A 10—Amount—Effect of Custom Upon.

A custom among stenographers estimating the number of folios to a page will not prevent a reduction of their charges when an actual count shows a smaller number of folios.

(Mich.) Maltby v. Plummer (1889), 73 Mich. 539, 41 N. W. 683.

(N. Y.) Wright v. Nostrand (1879), 58 How. Pr. (N. Y.) 184.

An alleged custom among lawyers to pay from fifteen to twenty cents per folio, not known to one of the attorneys, is not sufficiently established to presume an agreement to pay twenty cents a folio, the statutory rate being ten cents.

(N. Y.) Cavanagh v. O'Neill (1897), 20 Misc. 233, 45 N. Y. S. 789.

The custom of unofficial stenographers to charge twenty-five cents a folio for transcribing testimony upon a reference, instead of ten cents, the rate allowed to official stenographers under Code Civ. Pro., § 3311, is unreasonable and cannot be enforced, though this section of the code applies only to official stenographers.

(N. Y.) Eckstein v. Schleimer (1909), 62 Misc. 635, 116 N. Y. S. 7.

A custom among stenographers of computing two and one-half folios to a page will not prevail in estimating the number of folios of a transcript for the taxing of costs.

(Mich.) *Maltby v. Plummer* (1889), 73 Mich. 539, 41 N. W. 683.

Where the statute regulating official stenographers makes it their duty to prepare a transcript in narrative form when requested by a party to the suit, and fixes the compensation therefor, and such transcript is furnished to the attorney of a party in response to a demand therefor, the stenographer is entitled to his fees, even if the custom and practice of the courts make the preparation of a statement of facts a part of the legal services to be rendered by the attorney of the party appealing.

(Tex.) *Jones & Co. v. Smith* (1908), 49 Tex. Civ. App. 637, 109 S. W. 1111.

### 6B Right to Perform and Charge for Outside Services.

When a statute which sets out the duties of an official stenographer does not require his entire time, such stenographer may recover for work which does not fall within his official duties and which he has done under a special contract.

(Mich.) *Langley v. Hill* (1886), 63 Mich. 271, 29 N. W. 709.

When a statute sets out a certain compensation for a court stenographer and also provides for certain services, the compensation only covers such services, and additional services, such as furnishing transcripts when ordered by the court, may be charged for.

(Pa.) *Lehigh County v. Meyer* (1883), 102 Pa. 479.

Contract by assembly stenographer appointed under Legislative Law, § 7, for work outside her official duty, *held* not against public policy.

(N. Y.) *Temple v. Brooks* (1915), 151 N. Y. S. 191.

### 6C Right to Demand Payment in Advance.

A stenographer may demand payment of his fees or satisfactory security before performance of the services requested.

(Ind.) *Merrick v. State* (1878), 63 Ind. 327.

(Mo.) *State ex rel v. Wofford* (1895), 126 Mo. 435, 29 S. W. 152.

(Neb.) *State v. Moore* (1878), 8 Neb. 22.

(N. Y.) *Guth v. Dalton* (1880), 58 How. Pr. (N. Y.) 289.

It is discretionary with the court whether or not it will order the testimony in a criminal case transcribed by the official reporter at the expense of the county; and without such order the reporter cannot be compelled to transcribe his notes for the defendant unless his fees therefor are tendered him.

(Cal.) *Richards v. Superior Court* (1904), 145 Cal. 38, 78 Pac. 244.

Plaintiff in a suit in equity *held* not entitled to judgment compelling the stenographer taking the testimony before the referee to file a transcript before payment of the cost of the work.

(Mo.) *Johnson v. Corley* (1913), 175 Mo. App. 223, 157 S. W. 876.

An order will not be made by the supreme court requiring a reporter of the district court to prepare a transcript of evidence preliminary to the settlement of a bill of exceptions, when the record discloses that a like order had been made by the proper district judge upon the precedent condition that the reporter's legal fees should first be paid, there being shown neither a compliance with such order, nor an attempt to review it.

(Neb.) *Argabright v. State* (1896), 46 Neb. 822, 65 N. W. 886.

A stenographer may require compensation in advance.

(N. Y.) *Guth v. Dalton* (1880), 58 How. Pr. (N. Y.) 289.

Where a defendant desires to appeal, his counsel should promptly deposit with the court stenographer a sufficient sum of money to pay for having the notes of the testimony extended, and should then request the trial court to make a mandatory order requiring such stenographer to extend the notes of the testimony within sufficient time to allow defendant to perfect his appeal within the time required by law.

(Okla.) *Farmer v. State* (1911), 5 Okla. Cr. 151, 114 Pac. 753.

A reporter is not under any official duty to transcribe testimony, upon demand of defendant tried on indictment for a felony and convicted of a misdemeanor, where defendant makes no offer to pay such reporter.

(Ga.) *Rozar v. McAllister* (1912), 138 Ga. 72, 74 S. E. 792.

Mandamus will not lie to compel the official stenographer of a city court to furnish to one convicted of a misdemeanor in that court a transcript of the notes taken on the trial without having first paid therefor.

(Ga.) *Bowles v. Malone* (1912), 139 Ga. 115, 76 S. E. 854.

A stenographer cannot require compensation before his work is done.

(N. Y.) *Wright v. Nostrand* (1879), 58 How. Pr. (N. Y.) 184.

Under Code Civ. Pro., §§ 953-a and 953-b, where a transcript has been ordered, the stenographer must file the same without concurrent payment of his fees, which do not become due until the approval of the transcript by the trial judge.

(Cal.) *Gjurich v. Fleg* (1911), 160 Cal. 331, 116 Pac. 745.

An attorney general cannot be compelled by the official stenographer to pay his fees in advance.

(Mont.) *State v. Ledwidge* (1902), 27 Mont. 197, 70 Pac. 511.

A court cannot allow compensation to the official stenographer before the rendition of the services.

(Ga.) *Ragland v. Palmer* (1894), 93 Ga. 777, 21 S. E. 145.

The court may protect the stenographer by a summary order to an attorney to make payment when such attorney has wrongfully refused to pay the legal charges.

(N. Y.) *Wright v. Nostrand* (1879), 58 How. Pr. (N. Y.) 184.

A court cannot, after a trial has been commenced, refuse to hear one of the parties because he refuses to pay his proportion of the stenographer's fees.

(Mich.) *Wheaton v. Atlantic Giant Powder Co.* (1879), 41 Mich. 718, 3 N. W. 203.

When a statute provides for the taxing of stenographer's fees, and that no reporter must be required to perform any services in a civil case unless his fees have been paid to him or deposited in court, the court has authority to stay all proceedings in a civil action until the party in whose favor a verdict has been rendered pays the fees of the reporter.

(Cal.) *Rhodes v. Spencer* (1885), 68 Cal. 199, 8 Pac. 855.

While a stenographer is not obliged to give his notes to a referee, yet if he does so merely for the purpose of examination by the referee and for use as a basis of the referee's report, he cannot limit the effect of such delivery, and the referee must file the notes with his report, although the fees are unpaid.

(N. Y.) *Pope v. Perault* (1880), 22 Hun (N. Y.) 468.

Where a stenographer prepared a transcript and filed the same so that the judge might consult it, but afterwards withdrew the transcript and held the same because the appellant failed to pay therefor, the court can order the return of the same to the files.

(Wash.) *State ex rel v. Allyn* (1891), 2 Wash. 470, 27 Pac. 233.

When a shorthand reporter has voluntarily taken notes in an action, without demanding a deposit from the parties thereto, and the trial has terminated and judgment has been entered, he stands in no more favorable relation than that of a creditor of the parties to the action for the amount of his fees, and a judge has no right to refuse to settle a bill of exceptions until the stenographer's fees are paid, and if the judge refuses to settle the bill, he will be compelled by mandamus so to do.

(Cal.) *James v. McCann* (1892), 93 Cal. 513, 29 Pac. 49.

### 6D Liability of Parties for Fees.

A party ordering a transcript is liable to the stenographer for the fees in making the transcript.

(Colo.) *Keady v. Owers* (1902), 30 Colo. 1, 69 Pac. 509.

(Ind.) *Merrick v. State* (1878), 63 Ind. 327; *Miller v. Palmer* (1900), 25 Ind. App. 357, 58 N. E. 213.

(Iowa) *Godfrey v. McKean* (1880), 54 Iowa 127, 6 N. W. 151.

(Neb.) *State v. Moore* (1878), 8 Neb. 22.

(Pa.) *Briggs v. Erie County* (1881), 98 Pa. 570.

Under *Sayles Rev. Civ. Stats.*, Art. 1421, providing that each party to any suit shall be responsible to the officers of the court for the costs incurred by himself, a party to a cause on whose motion the stenographer is ordered to transcribe the testimony and file the same in order that such party may prepare a statement of facts, is liable for the cost of transcribing the notes.

(Tex.) *Allen v. Hazzard* (1903), 33 Tex. Civ. App. 523, 77 S. W. 268.

Where a court reporter furnishes copies during the trial at an attorney's request, and the client knows that they are being used by his attorney, he is liable therefor.

(Ind.) *Palmer v. Miller* (1898), 19 Ind. App. 624, 49 N. E. 975.

The liability of a party ordering a transcript to pay for the same is not affected by the fact that he did not know that he was to pay for the transcript in addition to the stenographer's salary.

(Ind.) *Miller v. Palmer* (1900), 25 Ind. App. 357, 58 N. E. 213.

Upon a special proceeding all the parties thereto are liable for a stenographer's fee.

(N. Y.) *Bottome v. Alberst* (1905), 47 Misc. 665, 94 N. Y. S. 348.

Where an attorney is employed to conduct litigation for the protection of the property of a corporation, he has authority to bind the corporation for the payment of necessary expenses, including stenographer's fees, necessary to perfect an appeal to a higher court.

(S. D.) *Pilcher v. Sioux City Safe Co.* (1899), 12 S. D. 52, 80 N. W. 151.

On the trial of a case before defendant as referee the salaried stenographer of his firm was by stipulation employed as stenographer to report and transcribe the testimony, his compensation to form part of the referee's fees and to be taxed as such. There were nine sessions at which testimony was taken, and the referee's and stenographer's fees were taxed in bulk at \$300. The referee accepted \$275 in full payment and sent the stenographer a check for \$50 for services, which was refused and returned. In an action by the assignee of the stenographer's claim for fees it was shown that the value of the services was \$183.37, and that the referee's statutory fees amount to \$90. *Held*, that it not appearing that the stenographer was consulted as to the reduction of the referee's fees or consented thereto, plaintiff was entitled to recover the full amount sued for.

(N. Y.) *Poucher v. Faber* (1905), 46 Misc. 596, 92 N. Y. S. 870. (See opinion on first trial, 1904, 90 N. Y. S. 385.)

A client is liable to a stenographer for his fees, even where his attorney contracts to pay a higher price than the client authorized the attorney to pay.

(Cal.) *Whitton v. Sullivan* (1892), 96 Cal. 480, 31 Pac. 1115.

Where an unofficial reporter consents that his fees on a reference hearing be made a part of the referee's fees, and the referee forfeits his fees under Code Civ. Pro., § 1019 by failing to file his report in time, the stenographer's fees are forfeited, his remedy being against the referee. Though generally litigants are liable to the referee and the stenographer for their services under a reference, the liability may be avoided by express contract or by stipulation.

(N. Y.) *Bottome v. Neeley* (1909), 194 N. Y. 575, 88 N. E. 1115. (Affirming 124 App. Div. 600, 109 N. Y. S. 120, and 54 Misc. 268, 104 N. Y. S. 429.)

An administrator brought a proceeding to recover certain papers alleged to belong to the estate, and the committee of an incompetent person who was interested in the estate appeared on a motion for the appointment of a referee, and took part in the reference. *Held*, that such committee was liable for the fees of the stenographer.

(N. Y.) *Bottome v. Alberst* (1905), 47 Misc. 665, 94 N. Y. S. 348.

A stenographer employed to take the official report of a reference and to furnish copies of the same has a joint claim against all the parties, unless there is an express agreement to the contrary.

(N. Y.) *Adams v. N. Y. etc. R. R. Co.* (1888), 20 Abb. N. C. 180; *Macvey v. Metropolitan El. R. Co.* (1892), 64 Hun 634, 46 N. Y. S. R. 367, 19 N. Y. S. 133.

A stenographer employed by a referee to take testimony can sue either party to a reference for his fees, because a joint and several promise to pay is implied by law against both parties through the acceptance of his services, and this promise is not negated by the terms of the order of reference charging the expense to the defeated party, unless he knew of these terms before the reference.

(N. Y.) *Eckstein v. Schleimer* (1909), 62 Misc. 635, 116 N. Y. S. 7.

Where the parties to a reference agreed that the fees of the stenographer should be taxed with the referee's costs, they are jointly liable to him, and an action against only one of them will not lie for defect of parties.

(N. Y.) *Finch v. Wells* (1910), 66 Misc. 384, 123 N. Y. S. 667.

In an action by a stenographer for services alleged to have been rendered to two defendants jointly at hearings before an auditor in actions which the defendants had brought against each other, if it appears that when the plaintiff was employed the defendants had agreed with each other that each of them should pay only one-half of her bill, but the plaintiff testified that she was ignorant of this arrangement and that, although she understood in a general way that the parties would divide her bill, she did not agree to look to each of them for only one-half of it, it is a question for the jury whether there was a joint contract under which each defendant is liable for the whole amount of the bill.

(Mass.) *Knowlton v. Parsons* (1908), 198 Mass. 439, 84 N. E. 798.

A party's instruction to his attorney not to employ a stenographer will not prevent a recovery by the stenographer where he has no knowledge of the limitation of the attorney's authority.

(N. Y.) *Thornton v. Tuttle* (1887), 20 Abb. N. C. 308, 7 N. Y. S. R. 801.



An attorney for a party has implied authority to bind his client by the employment of a stenographer to take and write out the testimony of witnesses upon the reference of a special issue.

(N. Y.) Thornton v. Tuttle (1887), 20 Abb. N. C. 308, 7 N. Y. S. R. 801.

An attorney has power to bind a client for the payment of stenographer's and referee's fees.

(N. Y.) Bottome v. Neeley (1907), 54 Misc. 258, 104 N. Y. S. 429.

In a proceeding to have one declared an incompetent, the alleged incompetent is not liable for stenographic services at such proceeding by an unofficial reporter employed by petitioner, in the absence of contract, and in such case the mere failure to object or protest to such employment does not amount to an implied contract.

(N. Y.) Carpenter v. Hammond (1910), 68 Misc. 438, 125 N. Y. S. 31.

A stenographer's right to recover from a party is not affected by the direction in the order of reference that the testimony shall be taken at the expense of the opposite party, even though he knows of such direction.

(N. Y.) Thornton v. Tuttle (1887), 20 Abb. N. C. 308, 7 N. Y. S. R. 801.

In the absence of a special agreement, all the parties to an action are jointly liable to an official stenographer employed to take the official record of proceedings before a referee and furnish the parties with copies of the testimony.

(N. Y.) Adams v. N. Y. etc. R. R. Co. (1888), 20 Abb. N. C. 180.

Where the parties agree that the "successful party" shall pay the whole amount of the stenographer's bill, the party who prevails upon a reference and takes up the referee's report and enters judgment thereon, with costs, including the stenographer's bill, is the successful party within the agreement, and is alone liable for the full amount, although the judgment is modified on appeal, so that no costs can be taxed by either party.

(N. Y.) Adams v. N. Y. etc. R. R. Co. (1888), 20 Abb. N. C. 180.

Where a reporter was selected by agreement of the parties on a reference of a partnership accounting, and the court taxed one-half of the costs against each party, the reporter cannot recover all of his fees, in the absence of a special contract to that effect, from the successful party, the defeated party being insolvent, under Code § 3855 providing "that all costs accrued at the instance of the successful party which cannot be recovered of the other party may be recovered on motion by the person entitled to them against the successful party."

(Iowa) Cole v. Gates Lumber Co. (1906), 131 Iowa 189, 108 N. W. 235.

Where a stenographer is called in by a referee to take the testimony on a motion for alimony, and transcribes copies at the request of both parties, both are jointly liable for the fees, irrespective of any agreement between the parties of which the stenographer had no notice, and the payment of one-half does not discharge the party.

(N. Y.) Coale v. Suckert (1896), 18 Misc. 76, 75 N. Y. S. R. 973, 41 N. Y. S. 583.

Appellee as reporter made a transcript in the case which appellant used as a part of his bill of exceptions. *Held*, that whether appellant formally ordered the transcript or not, he was obliged to pay for it.

(Ky.) Marks v. Graham (1881), 2 Ky. Law Rep. 222.

Evidence of two witnesses besides plaintiff, that plaintiff, who took notes of the evidence in the case, was requested to do so by the defendant, justifies the court, in an action to recover for taking shorthand notes of the

evidence, in making an order *nunc pro tunc*, directing the reporter to take the notes at the trial, although the defendant denied making the request.

(Ky.) Sebree v. Rogers (1907), 31 Ky. Law Rep. 476, 102 S. W. 841.

The attorneys in a case agreed to employ a stenographer and the agreement was entered upon the record. By a later agreement also entered upon the record, they agreed that the fees should be paid out of the estate in litigation. *Held*, that the stenographer was not bound by this agreement as she was not a party thereto, and that she could recover her fees from the parties to the action.

(N. Y.) Query v. Cooney (1901), 34 Misc. 161, 68 N. Y. S. 800.

One convicted of felony must pay for a transcript, in the absence of a statute allowing him a free transcript or a transcript at the expense of the county.

(Neb.) State v. Moore (1878), 8 Neb. 22.

Evidence is as necessary to prove a stenographer's contract as any other contract.

(N. Y.) Thornton v. Rogers (1894), 75 Hun 243, 58 N. Y. S. R. 611, 27 N. Y. S. 50.

Where the appellee was, by order of the circuit court, appointed official stenographer, and for his services an allowance was made and ordered to be certified to the fiscal court for payment, the fiscal court will not be permitted to say that the county had no notice of any motion or proceeding requiring it to pay the account, where it had actual notice and a hearing of the motion to set aside the allowance; and moreover, §§ 4367 to 4645, Ky. Stats. do not require notice. Where the commonwealth's attorney and the county attorney were both present at the trial and availed themselves of the transcript, it is no objection to such claim that the records fail to show that they requested the services of appellee as reporter.

(Ky.) Polsgrove v. Walker (1904), 26 Ky. Law Rep. 938, 82 S. W. 979.

To sustain an implied contract to pay a stenographer twenty-five cents a folio for transcribing testimony upon a reference, he must show that his services were reasonably worth that sum.

(N. Y.) Eckstein v. Schleimer (1909), 62 Misc. 635, 116 N. Y. S. 7.

When a stenographer is requested to furnish a transcript within 90 days, although the time limit for filing a bill of exceptions is 80 days, the stenographer may recover from the party requesting the transcript.

(Ind.) Arcana Gas Co. v. Moore (1894), 8 Ind. App. 482, 36 N. E. 46.

A claim for stenographer's services in connection with a hearing before a referee prior to the bankruptcy proceedings, may be proved and allowed against the bankrupt's estate.

(U. S.) In re J. B. Brewster & Co. (1910), 103 C. C. A. 42, 180 Fed. 109.

Under the provisions of the Sundry Civil Appropriation bills of 1894 and 1895 (27 St. 609, 28 St. 417), the attorney general has power to authorize the employment by the district attorney of a stenographer to assist in preparing indictments, and the government is liable for the compensation of such stenographer.

(U. S.) United States v. Denison (1897), 25 C. C. A. 496, 80 Fed. 370.

A stenographer must look to the master for his fees, not to the parties, or either of them.

(Ill.) Schnadt v. Davis (1900), 185 Ill. 476, 57 N. E. 652.

**6E Liability of Attorneys for Fees.**

Unless an attorney expressly binds himself he will not be held personally liable for the compensation of a stenographer in a cause.

- (Cal.) *Whitton v. Sullivan* (1892), 96 Cal. 480, 31 Pac. 1115.  
 (Ind.) *Miller v. Palmer* (1900), 25 Ind. App. 357, 58 N. E. 213.  
 (N. Y.) *Bonynge v. Field* (1880), 81 N. Y. 159; *Harry v. Hilton* (1882), 64 How. Pr. 199, 11 Abb. N. C. 448, 11 Daly 232; *Ryan v. Rand* (1887), 20 Abb. N. C. 313, 9 N. Y. S. R. 523; *Coale v. Suckert* (1896), 18 Misc. 76, 75 N. Y. S. R. 973, 41 N. Y. S. 583; *Tyrrel v. Hammerstein* (1900), 33 Misc. 505, 67 N. Y. S. 717; *Query v. Cooney* (1901), 34 Misc. 161, 68 N. Y. S. 800.

In the absence of an agreement that the attorney will be liable therefor, a stenographer cannot recover from the attorney the cost of a transcript furnished such attorney for his client.

- (N. Y.) *Bonynge v. Waterbury* (1878), 12 Hun 534; *Sheridan v. Genet* (1878), 12 Hun 660.

When a stenographer is employed by the attorney for a receiver to act in a reference ordered by the court, and the stenographer knows that the attorney is in fact the attorney for the receiver, the receiver is individually liable and the attorney is under no personal liabilities.

- (N. Y.) *Ryan v. Rand* (1887), 20 Abb. N. C. 313, 9 N. Y. S. R. 523.

The court will not compel an attorney to pay an examiner's fees for taking testimony, but will leave the latter to his remedy at law.

- (N. Y.) *Curtis v. Engle* (1842), 4 Edw. Ch. (N. Y.) 121.

In an action by a stenographer against an attorney for his fees, evidence of a custom between them by which the attorney paid such fees is inadmissible, and the usual rule of agency applies.

- (N. Y.) *Bonynge v. Field* (1880), 81 N. Y. 159.

An attorney who directed an official reporter to prepare a bill of exceptions, and who made no claim that he had authority to bind his client to pay therefor, was liable for the value of said services; but where the reporter sued the client for same under a mistaken belief as to the law, the reporter could not recover from the attorney the expense in unsuccessfully prosecuting the suit against the client.

- (Colo.) *Bloomfield v. Nevitt* (1913), 24 Colo. App. 91, 131 Pac. 801.

**6F Liability of Public Bodies for Fees.**

When by statute a county is required to pay a court stenographer, the county cannot refuse payment upon the ground that the council or other board has made no appropriation for such purpose.

- (Pa.) *Wilson v. City of Philadelphia* (1883), 14 Wkly. Notes Cases 74.

For attending court and taking notes, an official stenographer should be paid out of the public treasury, but for a transcript of the notes, unless it is ordered by the court or unless a statute requires the making and filing of the same, a county is not liable, and it cannot be made liable by any action of the council in the case.

- (Pa.) *Briggs v. Erie County* (1881), 98 Pa. 570; *Lehigh County v. Meyer* (1883), 102 Pa. 479.

Under a statute providing that a stenographer shall be paid for his services before an examining magistrate out of the treasury of the county, upon the certificate of the magistrate, the county auditor must draw a warrant on the county treasurer for such compensation upon the certificate of the magistrate, without the same having been passed upon by the board

of supervisors, although the supervisors are compelled by law to examine and settle all accounts against the county except the salaries of officers.

(Cal.) *McAllister v. Hamlin* (1890), 83 Cal. 361, 23 Pac. 357.

When the legislature has made no appropriation to pay for the services of a stenographer, the Comptroller is not authorized to draw his warrant to pay the salary.

(Tex.) *Pickle v. Finley* (1898), 91 Tex. 484, 44 S. W. 480.

When a statute provides for a special stenographer's fund and that the fees of the stenographer are to be paid out of the fund, and there is not enough money in the fund to pay a stenographer's salary, a county is not liable for the payment of the stenographer's salary out of the general revenue or any other fund.

(Ark.) *Franklin County v. McRaven* (1900), 67 Ark. 562, 55 S. W. 930; *Dunn v. Ouachita Valley Bank* (1902), 71 Ark. 135, 71 S. W. 265.

The stenographer of the New York Surrogate's Court, under the act of 1865, is not limited in collecting his salary to the fees paid by that court into the county treasury; if such fees are inadequate, the excess is a county charge.

(N. Y.) *Munson v. New York* (1878), 57 How. Pr. 497.

When a statute makes a city liable for a transcript taken in a homicide case, and in a suit by a stenographer it is stipulated that the transcript was furnished pursuant to statute, a judgment for the stenographer is not justified, as such stipulation does not show that the transcript was furnished in a homicide case.

(N. Y.) *Baker v. City of N. Y.* (1900), 56 App. Div. 350, 67 N. Y. S. 814.

The circuit clerk is liable on his official bond for the amount of the stenographer's fees in counties having 45,000 inhabitants or less, which he is required to tax, if he has failed and neglected to tax up such fees against the party litigant.

(Mo.) *State ex rel v. Gideon* (1900), 158 Mo. 327, 59 S. W. 99.

And it seems that an action for such failure must be maintained by the state at the relation of the county.

(Mo.) *State ex rel v. Gideon* (1900), 158 Mo. 327, 59 S. W. 99.

It is not necessary to the payment of a claim for the services of a phonographic reporter fixed by the court pursuant to law, that it must have been presented to the auditor, nor is it necessary that the court's order shall name the fund out of which it is to be paid, as it is payable out of the general fund.

(Cal.) *Stevens v. Truman* (1899), 127 Cal. 155, 59 Pac. 397.

The attorney general employed a stenographer in a certain litigation, and the stenographer continued to perform his duties under the successor of the attorney general. Afterwards the legislature appropriated money to pay for expenses in the office, including the stenographer's services. *Held*, a ratification of the entire contract, although the moneys so appropriated were used for other purposes.

(N. Y.) *Carroll v. State* (1910), 68 Misc. 41, 124 N. Y. S. 888.

## 6G For Services before Coroners.

Under the consolidated Act of 1889 stenographers appointed by the board of coroners were to be paid for transcripts made by order of such board. The Greater New York City charter provides that coroners' stenographers shall transcribe the proceedings taken before a jury in a coroner's court, but provides no compensation therefor. It is further provided in said

charter that the consolidated act was only repealed when inconsistent with the charter. *Held*, that a stenographer of the board of coroners could recover from the city for a transcript furnished to the district attorney, as such provision was not repealed by said charter.

(N. Y.) *Baker v. City of New York* (1900), 56 App. Div. 350, 67 N. Y. S. 814.

The provision in the Greater New York City charter which provides that the salaries of all officers whose offices are created by the municipal assembly shall be fixed by such assembly, does not apply to stenographers of coroners.

(N. Y.) *Baker v. City of New York* (1900), 56 App. Div. 350, 67 N. Y. S. 814.

When a stenographer takes down testimony before a coroner at the request of the county attorney, and his services are necessary to assist such officer, his fees should be allowed.

(Mich.) *Turner v. Smith*, Calhoun Circuit Judge (1894), 101 Mich. 212, 59 N. W. 398.

The district attorney of New York county cannot incur an indebtedness on behalf of the City of New York for stenographer's fees for transcripts of testimony taken in the coroner's court, not within the appropriation allowed by the Board of Estimate and Apportionment for the conduct of his office.

(N. Y.) *Hamburger v. City of N. Y.* (1910), 66 Misc. 175, 121 N. Y. S. 316.

A coroner is not entitled to an allowance for a stenographer.

(Pa.) *In re Inquest of Shaft* (1887), 3 Pa. Co. Ct. 10.

#### 6H Transcripts at Expense of County or State.

The court may, in a criminal action, when satisfied that the defendant is too poor to pay for a transcript, order a transcript to be made and paid for by the county, but this is not a matter of right.

(Ind.) *Merrick v. State* (1878), 63 Ind. 327; *Ex parte Morgan* (1889), 122 Ind. 428, 23 N. E. 863.

(Mo.) *State ex rel v. Wofford* (1894), 121 Mo. 61, 25 S. W. 851.

(Mont.) *State ex rel v. Sec. Jud. Dist. Ct.* (1901), 24 Mont. 566, 63 Pac. 389.

A stenographer cannot recover as a county charge for a transcript furnished, upon a murder trial, to defendant's attorney, under Code Civ. Pro., § 86, nor under Code Crim. Pro., § 456, where the defendant is only convicted of murder in the second degree.

(N. Y.) *Moynahan v. City of New York* (1912), 205 N. Y. 181, 98 N. E. 482.

The court stenographer may not, though on order of the court, furnish, at the expense of the county, to an attorney assigned to defend a poor person charged with murder, a transcript of the minutes from day to day during the trial.

(N. Y.) *Kenney v. Prendergast* (1912), 153 App. Div. 325, 137 N. Y. S. 1097.

In a proper case the court will direct that, at the expense of the county, a copy of the stenographer's minutes on the trial shall be made, to which the prisoner's counsel may have access.

(N. Y.) *People v. Willett* (1885), 3 N. Y. Cr. Rep. 54, 1 How. Pr. (N. S.) 196.

When an attorney was assigned as counsel for accused after proceedings before the committing magistrate, but was not counsel at the trial of joint defendants, he was properly allowed an item of \$22 paid for the stenographer's minutes before the magistrate and for a transcript of the

testimony of a witness jointly indicted with accused but separately tried.

(N. Y.) *Edwards v. Prendergast* (1912), 141 N. Y. S. 254.

Under Code Cr. Pro., § 308, providing counsel appointed for the defense in a capital case may be allowed his "personal and incidental expenses," allowance may be made for the cost of the stenographer's minutes covering earlier steps in the prosecution, but not for typewriting.

(N. Y.) *People ex rel v. Prendergast* (1913), 80 Misc. 321, 141 N. Y. S. 255.

Code Cr. Pro., §§ 456, 458 and 485 do not require the clerk, in a prosecution for murder in the first degree, to file with the judgment roll a transcript of the evidence.

(N. Y.) *Moynahan v. City of New York* (1912), 205 N. Y. 181, 98 N. E. 482.

In the absence of statute a court has no right to order a transcript at the expense of the county to be furnished to the defendant in a criminal action, although the court believes the defendant is too poor to pay for the same.

(Neb.) *State v. Moore* (1878), 8 Neb. 22.

§ 308, Code Crim. Pro. providing where counsel is assigned in a capital case, the court may allow personal and incidental expenses, does not include, without special authorization from the court, the expense of a daily transcript.

(N. Y.) *People v. Grout* (1902), 37 Misc. 430, 75 N. Y. S. 290.

A justice of the supreme court presiding at a murder trial lasting for several days has the inherent power, at public expense, to order a copy of the stenographer's minutes when requisite to enable him properly to discharge the duties imposed upon him, but the powers of the district attorney in this respect are prescribed by statute. The stenographer can recover as a county charge for transcribing his minutes for the use of the justice, but not for a copy voluntarily filed with the clerk. The justice has no inherent power to order a copy of the minutes to be supplied defendant's attorney at public expense.

(N. Y.) *Moynahan v. City of N. Y.* (1912), 205 N. Y. 181, 98 N. E. 482.

The county commissioners cannot be required or compelled to pay for a transcript for the defendant in a criminal case.

(Wash.) *Stowe v. State* (1891), 2 Wash. 124, 25 Pac. 1085.

Act 32 Leg., § 14, p. 268, does not authorize the furnishing of a transcript of the evidence at the expense of the state to an accused who was represented by an employed counsel.

(Tex.) *Jackson v. State* (1913), 70 Tex. Cr. Rep. 292, 156 S. W. 1183.

A court cannot in a civil case order a transcript of the stenographer's notes at the expense of the county, although the case may involve many parties and conflicting rights, and cannot be properly tried without a stenographer.

(Wash.) *State ex rel v. Super. Ct.* (1892), 4 Wash. 30, 29 Pac. 764.

Code Civ. Pro., § 274, providing that in criminal cases fees for reporting and for transcripts ordered by the court must be paid out of the county treasury on the court's order, does not vest in the court exclusive power to order a transcript, and does not deprive the district attorney of authority to order a transcript of testimony in a criminal case at the county expense when he deemed it necessary, under Stats. 1897, p. 575.

(Cal.) *Yolo County v. Joyce* (1909), 156 Cal. 429, 105 Pac. 125.

The application for an order for a transcript at the expense of the county should be made to the trial judge, even though the case is taken to

another county on a change of venue. If the order is made, the expense is borne primarily by the county of the trial.

(Iowa) State v. Cater (1899), 109 Iowa 69, 80 N. W. 222.

Although a judge has some discretion in ordering a transcript at the expense of the county, yet if he finds the defendant is unable to pay for it, it is an abuse of discretion to refuse to order it on the ground alone that the court believes that the defendant has had a fair trial.

(Iowa) State v. Robbins (1898), 106 Iowa 688, 77 N. W. 463; State v. Goodsell (1907), 136 Iowa 445, 113 N. W. 826; State v. Harris (1911), 151 Iowa 234, 130 N. W. 1082.

A person convicted of murder is entitled on appeal to a transcript of the record at the expense of the public on showing that he is without means and unable to pay the fees therefor.

(Wash.) State ex rel v. Fenimore (1891), 2 Wash. 370, 26 Pac. 807.

The discretion of a judge in regard to ordering a transcript at the expense of the county is not an absolute discretion, and is reviewable on appeal.

(Iowa) State v. Wright (1900), 111 Iowa 621, 82 N. W. 1013; State v. Shaffer (1908), 137 Iowa 93; 114 N. W. 540.

Under the statute and the particular facts, defendant *held* not entitled to a transcript at the expense of the county.

(Iowa) State v. Steidley (1907), 133 Iowa 31, 110 N. W. 147; State v. Kehr (1908), 137 Iowa 91, 114 N. W. 542; State v. Shaffer (1908), 137 Iowa 93, 114 N. W. 540; State v. Dewey (1912), 155 Iowa 469, 136 N. W. 533.

The proper remedy for refusal of the circuit court to furnish a poor person in a criminal case with a transcript of the evidence at the cost of the county, is by application to the Supreme Court for an order requiring the court to furnish such transcript.

(Ind.) Miller v. State (1898), 149 Ind. 607, 49 N. E. 894, 40 L. R. A. 109.

The refusal of the court to furnish a poor person with a transcript of the evidence in the trial of a criminal case as provided for by statute, after the trial and judgment, is not properly assigned as an error of law occurring at the trial.

(Ind.) Miller v. State (1898), 149 Ind. 607, 49 N. E. 894, 40 L. R. A. 109.

It is discretionary with the court whether or not it will order the testimony in a criminal case transcribed by the official reporter at the expense of the county.

(Cal.) Richards v. Superior Court (1904), 145 Cal. 38, 78 Pac. 244.

When a defendant fails to make a proper affidavit of impecuniosity, he cannot recover the amount paid for a stenographer's transcript.

(Utah) Salt Lake City v. Robinson (1911), 39 Utah 275, 116 Pac. 455.

A judge may require the notes of the official stenographer to be written out at public expense for comparison with the brief of evidence as presented by the movants for a new trial; but he has no power to require the movant to make up a brief of evidence from the report of the official stenographer, or produce the report or a copy of it to be used in verifying the brief.

(Ga.) Bugg v. State (1913), 13 Ga. App. 672, 79 S. E. 748.

The superior court in the absence of statute is without jurisdiction to order the costs of an appeal prosecuted by a convicted defendant in forma pauperis, to be charged against the county and to be paid by the county.

(Wash.) State ex rel v. Superior Ct. Lewis County (1903), 32 Wash. 80, 72 Pac. 1028.

### 61 Free Transcripts.

§ 2261, R. S. 1909, requires officers of the court to perform their duties without fee or award for any party allowed to prosecute an action as a poor person, and this section is held to be applicable to court stenographers, as well as other officers of the court; hence it is the duty of the judge, after having granted a party permission to sue as a poor person, to order the stenographer to furnish such party a transcript of the proceedings at the trial without the payment of the fees charged therefor.

(Mo.) State ex rel v. Hitchcock (1913), 171 Mo. App. 109, 153 S. W. 546.

Under § 4642, Stat. 1903, empowering a judge of a circuit court to require the official stenographer "to furnish a transcript upon the motion of any party suing in forma pauperis," a person thus suing is entitled to a transcript of the evidence without payment of a fee therefor, and an order of the judge refusing to require the official stenographer to file his transcript is reviewable by the Court of Appeals.

(Ky.) Smith v. Sisters of the Good Shepherd (1905), 27 Ky. Law Rep. 1170, 87 S. W. 1076.

Where a defendant in a criminal prosecution complied with Acts. 32 Leg., c. 119, § 8, that on filing proper affidavit the court shall order the official stenographer to make a transcript in duplicate, the neglect of the stenographer to comply with an order of the trial judge within the time extended to perfect the appeal, will not preclude defendant from having the Court of Appeals pass on his case, and it will upon a showing of the stenographer's misconduct make an order for the preparation of the statement.

(Tex.) Jones v. State (1912), 147 S. W. (Tex. Cr. R.) 587.

Under White's Annotated Code of Crim. Pro., Art. 547, requiring the court in capital felony cases to appoint counsel for accused too poor to employ counsel, and Acts 32d Leg., c. 264, providing for official court stenographers, and requiring them, when an appeal is perfected, to transcribe testimony, and that where the court appoints an attorney for accused the stenographer shall furnish a transcript, the court in a capital felony case, where it appoints an attorney for accused because he is too poor to employ counsel, must require the official stenographer, when an appeal is perfected, to furnish a transcript, and where the court orders the stenographer so to do, it must see that the order is complied with.

(Tex.) Burden v. State (1913), 70 Tex. Cr. Rep. 349, 156 S. W. 1196.

An accused is entitled to appeal from a conviction without payment of the fees of the stenographer or clerk for making up the record, upon a proper showing that he is unable to pay such fees.

(Okla.) Jeffries v. State (1913), 9 Okla. Cr. App. 573, 132 Pac. 823.

Bill of exceptions held not such a part of the transcript which a court reporter is required by Kirby's Dig. §§ 1329-1336, to prepare free of charge, as to preclude such stenographer from charging party's attorney therefor on agreement.

(Ark.) Mullett v. Morris (1915), 174 S. W. 1161.

Under Acts 32d Leg. c. 119, §§ 5, 8, providing among other things for free transcripts by official stenographer, held it was the duty of such stenographer to prepare transcript upon request of pauper appellant, and though such appellant may prepare a statement of facts independent of the stenographer's notes and transcript, he is not precluded thereby from procuring an order to the stenographer to prepare a transcript free of charge.

(Tex.) Rice v. Roberts (1915), 177 S. W. (Tex. Civ. App.) 149.



**6J 1—Taxation of Fees, When Allowed—In General.**

The fees of official stenographers may be taxed as costs against the unsuccessful party.

- (Kan.) Beebe v. Wells (1887), 37 Kan. 472, 15 Pac. 565.  
 (S. D.) Ellis v. Walt (1894), 4 S. D. 504, 54 N. W. 925; Novotny v. Danforth (1896), 9 S. D. 412, 69 N. W. 585.  
 (U. S.) The E. Luckenback (1884), 19 Fed. (D. C.) 847.

Payments for transcripts are taxable as costs on appeal only where the same are essential to the preparation of amendments to the case on appeal.

- (N. Y.) Long Island Contracting Co. v. City of N. Y. (1910), 142 App. Div. 1, 126 N. Y. S. 429.

The compensation allowed the stenographer should be taxed against the losing party, under Rev. Stat. 1895, Arts. 1295-96.

- (Tex.) Killfoill v. Moore (1898), 45 S. W. (Tex. Civ. App.) 1024.

Only those costs and expenses incident to trials of criminal cases may be taxed as costs which are expressly authorized by Act of Assembly.

- (Pa.) Commonwealth v. Golden (1911), 21 Pa. Dist. Rep. 546.

The cost of a transcript of the reporter's notes is properly taxable as costs.

- (Iowa) Palmer v. Palmer (1896), 97 Iowa 454, 66 N. W. 734.

A stenographer's bill which does not exceed the limits prescribed by statute, and which is approved by the judge of the district court who tried the case, may properly be taxed as costs.

- (Tex.) Cox v. Patten (1902), 66 S. W. (Tex. Civ. App.) 64.

There being no obligation upon a stenographer to furnish a copy of the minutes written out from the notes of his predecessor who has died, at the rates provided for by Judiciary L., §§ 299-303, his fees or those of an unofficial stenographer, as long as reasonable, are taxable as costs.

- (N. Y.) Griffin v. Flank (1913), 79 Misc. 415, 140 N. Y. S. 122.

The fees of a stenographer are to be taxed by the presiding judge and paid by the party in whose behalf the service was rendered, and then they are to be taxed as a part of the costs of the suit in the trial court.

- (Ky.) Jenkins v. L. & N. R. R. Co. (1899), 20 Ky. Law Rep. 1534, 105 Ky. 735, 49 S. W. 537.

The translation of the shorthand notes necessary only for the presentation of the appeal in the Supreme Court is not to be taxed as costs in the district court, but in the Supreme Court.

- (Iowa) Berkey v. Thompson (1905), 126 Iowa 394, 102 N. W. 134.

The cost of procuring a transcript of the evidence in the circuit court must be taxed there, though the transcript in law cases may be transmitted to the Supreme Court on appeal.

- (Or.) West v. McDonald (1912), 64 Or. 203, 128 Pac. 818.

As to taxation of costs for stenographer's fees, in the Supreme Court, in New Mexico, see

- (N. M.) Dailey v. Fitzgerald (1913), 17 N. M. 159, 130 Pac. 247; In re Fullen (1913), 17 N. M. 405, 132 Pac. 1138; State ex rel v. Bd. of Education (1913), 18 N. M. 286, 135 Pac. 1174.

Under Act 183 of the Public Acts of 1897 (C. L. §§ 363-414) which expressly repeals and supersedes all special statutes heretofore in force in the several circuits, the expense of procuring stenographer's transcript of testimony to use in settling a bill of exceptions is taxable as costs, though no application was made to the circuit court for an order requiring the stenographer to furnish it free of cost.

- (Mich.) Scott v. Univ. Mich. Athl. Assn. (1908), 154 Mich. 328, 117 N. W. 729.

The stenographer's receipt attached to the transcript is a sufficient statement of the amount paid therefor to be taxed as costs.

(Kan.) McAfee v. Walker (1910), 82 Kan. 355, 108 Pac. 79.

Where a party procures a transcript, he must serve a copy on the adverse party when he serves his proposed bill, in order to have the cost of the same taxed on appeal.

(Idaho) Keane v. Pittsburg Lead Min. Co. (1910), 18 Idaho 711, 112 Pac. 214.

On a motion to retax costs of the reporter's transcript of the evidence, the trial court may examine the transcript to determine the number of words contained therein, and the Supreme Court will presume, in the absence of a conclusive showing to the contrary, that the lower court made a proper ruling, and will not go to the certified transcript to determine the fact.

(Iowa) Stewart v. Colfax Consol. Coal Co. (1910), 147 Iowa 548, 126 N. W. 449.

A stenographer's fees may properly be allowed upon settling an executor's account.

(N. Y.) In re Arnton (1905), 106 App. Div. 326, 94 N. Y. S. 471.

In criminal cases the stenographer's fees are paid by the county, and in other cases they should be taxed as costs in the case.

(Wyo.) Chosen Friends' etc. League v. Otterson (1897), 7 Wyo. 89, 50 Pac. 194.

When there is a misunderstanding between the attorneys as to how many copies of the notes should be made, and the attorney for the losing party acquiesces in the printing of the extra copy, the prevailing party may tax the cost of such copy.

(N. Y.) Brown v. Sears (1898), 23 Misc. 559, 27 Civ. Pro. 412, 52 N. Y. S. 792.

When sureties on an administrator's bond except to the account and fail to establish any liability against the administrator, the stenographer's fees in such proceeding should be allowed against such sureties.

(N. Y.) In re Adams (1900), 51 App. Div. 619, 64 N. Y. S. 591.

In order to justify a surrogate in charging the stenographer's fees against the estate, the application must be made before the transcript is furnished.

(N. Y.) In re Byron (1891), 61 Hun 278, 40 N. Y. S. R. 845, 16 N. Y. S. 760.

When by statute a stenographer's fee is required to be taxed in each case in a district court in any county in which a stenographer is appointed, such fee must be taxed in every case, though a stenographer is not called upon to perform any services in that case.

(Kan.) Beebe v. Wells (1887), 37 Kan. 472, 15 Pac. 565.

Where the trial court orders the stenographer to furnish a person allowed to sue as a poor person a transcript of the proceedings at the trial without the payment of the fees chargeable therefor, the legal fees for doing such work are to be taxed in the stenographer's favor and are recoverable in the event judgment is entered for the plaintiff as provided by § 2261, R. S. 1909, and the order on the stenographer should so provide.

(Mo.) State ex rel v. Hitchcock (1913), 171 Mo. App. 109, 153 S. W. 546.

A requirement for the payment at the trial of one-half of the stenographer's fees, by each party, is for the security of the stenographer and the protection of the court, and does not alter the rule that costs are awarded

as indemnity for the party's expenses, and therefore the fees paid may be included in the costs.

(N. Y.) *Reynolds v. New York* (1861), 14 Abb. Pr. (N. Y.) 176, Note.

An admiralty court may authorize the employment of a stenographer to take testimony before a commissioner on a reference, and may tax his fees as costs, and the court will do so if the parties refuse to stipulate thereto, and the court believes the services of a stenographer are necessary, as for instance in a case which involves a large number of disputed items of account.

(U. S.) *Rogers v. Brown* (1905), 136 Fed. (D. C.) 813.

Where a stipulation provides that each party shall pay one-half of the stenographer's fees, and that the successful party may tax the same so paid as a disbursement, and the plaintiff fails to recover against one of several defendants, but is successful as to the others, the successful defendant is entitled to tax the sum actually paid by him for stenographer's fees.

(N. Y.) *Clegg v. Aikens* (1885), 17 Abbott's N. C. 88, 8 Civ. Pro. 249.

The provision that the reporter's fees for making a transcript shall be taxed in the costs, can only be applied when the transcript is ordered or used by the successful party, and each party is liable to the officer performing services for him, and, in case he succeeds in the action, the other party has the amounts so paid taxed against him for the benefit of the successful party.

(Ky.) *Marks v. Graham* (1881), 2 Ky. Law Rep. 222.

Where a stenographer, employed to make a transcript, had taxed in his favor therefor \$176.30, but on application to the circuit court to ascertain the amount due, judgment was given for \$100, the appellate court will order the clerk to retax such costs by substituting the corrected amount of \$100.

(Ind.) *Green v. Felton* (1909), 44 Ind. App. 321, 89 N. E. 320.

The Code of 1909, §§ 574-576, makes the district court the custodian of the record and authorizes the court or judge to amend and correct the transcript of the evidence before the same is filed and made a part of the record. In order to recover costs advanced for the transcript, the party ordering it must perfect his appeal. After the appeal is perfected, the supreme court is the only court authorized to direct which party shall pay the costs of the transcript.

(Kan.) *Gordon v. Munn* (1911), 83 Kan. 642, 112 Pac. 615.

## 6J 2—Taxation of Fees, When Allowed—For Transcripts Required by Court for Its Own Use.

A court may, under the provisions of Code of Civ. Pro., § 289 tax one-half of the expense of procuring a transcript of the stenographer's notes against each of the parties, whenever the court requires the use of the notes in reaching a decision.

(N. Y.) *Abendroth v. Manhattan R. Co.* (1886), 9 Civ. Pro. 406; *King v. Munzer* (1894), 31 Abb. N. C. 482, 62 N. Y. S. R. 106, 30 N. Y. S. 482.

The fees for a transcript cannot be taxed as costs unless the making of the transcript was ordered by the judge, under Ky. Stats., § 2639.

(Ky.) *Albin v. Louisville Ry. Co.* (1902), 114 Ky. 982, 67 S. W. 17.

Where an auditor was appointed by the Federal court, and counsel selected a reporter to furnish transcript in triplicate, one copy for the auditor, and one for each of the parties, neither the court nor the auditor passing on the question of the necessity or in any way authorizing the expenditure, but each party paying one-half of such expense, the amount so paid by the

prevailing party is taxable as costs. When the court appoints an auditor, it by implication authorizes and directs him to make reasonable use of stenographers. To refuse such assistance to an auditor, or compel him to pay the same out of his own fees, would merely obstruct the course of justice.

(U. S.) *Corporation of St. Anthony v. Houlihan* (1910), 106 C. C. A. 394, 184 Fed. 252.

### 6J 3—Taxation of Fees, When Allowed—For Transcripts for Party's Own Use.

Money paid for a transcript for a party's own convenience may be taxed as costs.

(Idaho) *Raft River Land etc. Co. v. Langford* (1898), 6 Idaho 30, 51 Pac. 1027.

(Mich.) *Maynard v. Vinton* (1886), 59 Mich. 155, 27 N. W. 2.

(N. Y.) *Varnum v. Wheeler* (1886), 9 Civ. Pro. 421; *Stevens v. N. Y. El. R. Co.* (1890), 58 N. Y. Super. Ct. 569, 18 Civ. Pro. 350, 31 N. Y. S. R. 404, 9 N. Y. S. 707; *Whitney v. Roe* (1894), 75 Hun 508, 57 N. Y. S. R. 683, 27 N. Y. S. 511.

Under Code Civ. Pro., § 1866, providing that "a party to whom costs are awarded in an action is entitled to include in his bill of costs necessary disbursements as follows: . . . the legal fees paid stenographers for per diem or for copies; . . . the reasonable expense in making transcript for the Supreme Court," the fact that copies of the testimony were ordered during the trial and prior to a final decision, being paid for by the parties obtaining them, did not prevent a recovery of the amount paid for them within the limitation fixed by statute; such copies being necessary to secure a review of the case.

(Mont.) *Mont. Ore Purch. Co. v. B. & M. etc. Co.* (1906), 33 Mont. 400, 84 Pac. 707.

When a case is reversed in the supreme court, the appellant can recover the fees paid for a transcript of the evidence.

(Ind.) *Wright v. Wilson* (1884), 98 Ind. 112.

See *Corporation of St. Anthony v. Houlihan* cited at 6J 2 of this digest.

### 6J 4—Taxation of Fees, When Allowed—As Necessary Disbursements.

When a transcript is necessary to enable a party to propose amendments to a case on appeal, the stenographer's fee for such copy may be taxed as a necessary disbursement.

(N. Y.) *Seshley v. Nichols* (1866), 32 How. Pr. (N. Y.) 182; *Stevens v. N. Y. El. R. Co.* (1890), 58 N. Y. Super. Ct. 569, 18 Civ. Pro. 350, 31 N. Y. S. R. 404, 9 N. Y. S. 707; *Price v. Western Distillery Co.* (1909), 114 N. Y. S. (App. Div.) 714.

The cost of the stenographer's minutes ordered at the outset of the trial by one of the parties with a view to using them to prepare amendments to the case on appeal is properly taxed as a disbursement against the unsuccessful party.

(N. Y.) *Pratt v. Clark* (1908), 124 App. Div. 248, 108 N. Y. S. 734.

Where plaintiff's counsel obtained a copy of the stenographer's minutes to prepare amendments to the case on appeal, plaintiff was entitled to have the cost of the copy included in his bill of costs, though the copy was ordered before any appeal was taken and was used by counsel in preparation of his brief.

(N. Y.) *Bremer v. Manhattan Ry. Co.* (1906), 51 Misc. 96, 99 N. Y. S. 746.

A respondent is entitled to costs for procuring stenographer's minutes to enable him to propose amendments to appellant's proposed case.

(N. Y.) *Ridabrock v. Metropolitan etc. R. Co.* (1896), 8 App. Div. 309, 40 N. Y. S. 938; *Park v. N. Y. C. R. R.* (1900), 57 App. Div. 569, 68 N. Y. S. 460, 1145; *Starkweather v. Sundstrom* (1906), 113 App. Div. 401, 98 N. Y. S. 1086.

Under Code of Civ. Pro., § 3256, the cost of a copy of the stenographic notes of a former trial procured for the use of a party on a subsequent trial, may be taxed as a necessary disbursement.

(N. Y.) *Flood v. Moore* (1877), 2 Abb. N. C. (N. Y.) 91; *Zelmanovitz v. Manhattan R. Co.* (1891), 24 Civ. Pro. 402, 67 N. Y. S. R. 405, 33 N. Y. S. 583.

The testimony of two witnesses was ordered, one by the court and another by counsel on account of the absence of a witness. The stenographer made a transcript of the testimony of the entire trial. Only the cost of such part of the transcript as related to the testimony of the two witnesses should be taxed.

(N. Y.) *Vibbard v. Kinser Constr. Co.* (1911), 145 App. Div. 673, 130 N. Y. S. 837.

In the absence of stipulation, the stenographer's notes being desirable, the expense thereof to the extent of ten cents per folio may be taxed against the unsuccessful claimant in a bankruptcy matter heard by a referee.

(U. S.) *In re Todd* (1901), 109 Fed. (D. C.) 265, 6 Am. B. R. 88.

Under Supreme Court rules and provisions of § 5, Laws 1899, p. 163, the statutory fee paid by a party to an action to the reporter for a transcript of the evidence to be used on motion for a new trial and appeal, may be taxed as costs against the party finally defeated on appeal. The general theory of our law and the rules of the court in regard to costs is that the losing party shall pay them, and the prevailing party on appeal is entitled to recover the amount paid by him to the reporter for a copy of the evidence whenever that is needed on appeal.

(Idaho) *Young v. Extension Ditch Co.* (1908), 14 Idaho 126, 93 Pac. 772.

Under R. S., c. 53, § 20, allowance of stenographer's fees is proper where a cause is referred to a master.

(Ill.) *Hughes v. Miller* (1912), 174 Ill. App. 293.

The expense of the stenographer's transcript of the evidence in preparing a motion for a new trial is a necessary disbursement within Code Civ. Pro. 1887, § 494, giving the prevailing party "his costs and necessary disbursements."

(Mont.) *Waite v. Vinson* (1896), 18 Mont. 410, 45 Pac. 552.

Under Supreme Court rule 6 (24 Pac. vi), the reporter's fee for transcribing notes for the record on appeal is properly taxable to the successful party.

(Nev.) *Brandon v. West* (1905), 28 Nev. 500, 83 Pac. 327.

In taxing the costs of appeal, not more than ten cents per folio can be allowed as disbursements for stenographic fees in making a transcript of the evidence, under laws of 1893, page 132.

(Wash.) *Nelson v. McLellan* (1904), 34 Wash. 181, 75 Pac. 635.

Ten cents per folio is the maximum amount that can be recovered for a statement of facts.

(Wash.) *Clark v. Eltinge* (1905), 39 Wash. 696, 83 Pac. 901.

Where there is no official stenographer each party pays half the cost of taking the testimony, and in case the minutes are transcribed the party securing the transcript pays the additional charge, and if this is done by

agreement the successful party taxes his share for taking the testimony to the unsuccessful party.

(U. S.) Sedlacek v. Bryan (1912), 192 Fed. (C. C.) 361.

Where the trial judge pursuant to an agreement of the attorneys ordered that the original transcript of the testimony be attached to the bill of exceptions settled and allowed, instead of directing that the original transcript be attached to a certified copy of the bill, it was incumbent on the appellant to procure from the clerk a certified copy of the entire testimony given at the trial, for which defendant was entitled to charge disbursements at the rate of ten cents per folio under the statute authorizing the clerk to charge such rates for copies of records furnished to private parties.

(Or.) Boothe v. Farmers & Traders Nat. Bank (1909), 53 Or. 576, 101 Pac. 390.

Where a trial judge in equity appoints a stenographer to take and report the testimony, it is proper to allow him the fees allowed by Rev. Code, 1905, § 2608, and to tax the same as costs and disbursements.

(N. D.) Investors' Syndicate v. Pugh (1913), 25 N. D. 490, 142 N. W. 919.

The Supreme Court will tax as a disbursement the necessary expense incurred for a transcript of the testimony in a suit in equity, when such transcript is prepared for the appeal, and after a decision by the trial court.

(Or.) Henderson v. Tillamook Hotel Co. (1915), 149 Pac. 473.

See Corporation of St. Anthony v. Houlihan cited at 6J 2 of this digest.

#### 6J 5—Taxation of Fees, When Allowed—Pro Rata.

When a stenographer is employed in a contest between co-executors as to the proper apportionment of their commission, the stenographer's compensation should be paid pro rata out of the commission.

(N. Y.) Hill v. Nelson (1883), 1 Dem. (N. Y.) 357.

#### 6K 1—Taxation of Fees, When Not Allowed—In General.

The fees of the official stenographer cannot be taxed as costs against the unsuccessful party.

(N. M.) Price v. Garland (1899), 5 N. M. 98, 20 Pac. 182.

(N. Y.) Provost v. Farrell (1878), 13 Hun 303; Colton v. Simmons (1878), 14 Hun 75; Matter of Engelbrecht (1897), 15 App. Div. 541, 44 N. Y. S. 551; Matter of Maritch (1899), 29 Misc. 270, 61 N. Y. S. 237; Matter of Town of Hempstead (1899), 36 App. Div. 321, 55 N. Y. S. 345. (Wash.) Bringgold v. Spokane (1898), 19 Wash. 333, 53 Pac. 368.

The fees of the official stenographer cannot be taxed as costs against the unsuccessful party unless the stenographer has been employed by consent of the parties, or a stipulation has been made for his fees.

(Mo.) State ex rel v. Gans (1897), 72 Mo. App. 638.

Where there is default in pleading there can be no trial, within the terms of the statute requiring a stenographer's fee to be taxed.

(Mo.) Barber Asphalt Pav. Co. v. Field (1908), 132 Mo. App. 488, 112 S. W. 3.

Rev. St. 1899, § 10115 does not authorize a fee to the stenographer for preparing a bill of exceptions, which fee can be taxed as costs. There is no law authorizing a stenographer to make a bill of exceptions at the request of either party. Where the appeal is taken in the short form, the costs incurred in making a copy of the bill of exceptions cannot be taxed.

(Mo.) Drumm Cofm. Co. v. Bank (1904), 105 Mo. App. 197, 79 S. W. 714; Ray Co. Sav. Bank v. Hutton (1909), 226 Mo. 713, 127 S. W. 59.

A stenographer's fees cannot be taxed as costs against the opposition of counsel.

(N. Y.) *Shaver v. Eldred* (1895), 86 Hun 61, 66 N. Y. S. R. 783, 33 N. Y. S. 158.

A stenographer's fees cannot be taxed when his employment was not directed by the court and the parties do not consent to such taxation.

(U. S.) *Gunther v. Liverpool etc. Ins. Co.* (1882), 20 Blatch. (U. S.) 390, 10 Fed. (C. C.) 830.

A losing party cannot be required by a master in chancery to pay the stenographer's fee for taking the testimony.

(Ill.) *Smyth v. Stoddard* (1903), 203 Ill. 424, 67 N. E. 980.

A stenographer's fees are not taxable.

(N. Y.) *Provost v. Farrell* (1878), 13 Hun 303.

The fees of a stenographer employed by a master on an accounting before him will not be allowed as costs, unless there is an agreement by the parties to that effect.

(N. M.) *Givens v. Veeder* (1893), 9 N. M. 405, 54 Pac. 879.

(U. S.) *Bridges v. Sheldon* (1880), 18 Blatch. (U. S.) 507, 7 Fed. (C. C.) 17.

The price paid for a stenographer's transcript cannot be taxed as costs.

(N. Y.) *Cohen v. Weill* (1900), 33 Misc. 764, 67 N. Y. S. 917.

When a transcript which defendant used in preparing a bill of exceptions was secured and paid for on a previous trial, upon a subsequent trial the plaintiff will not be taxed with such expense as costs, although the expense might otherwise be taxable.

(Mich.) *Geo. W. Roby Lumber Co. v. Gray* (1889), 73 Mich. 363, 42 N. W. 839.

If a court refuses to order a transcript unless plaintiff consents thereto, and plaintiff does not consent, the stenographer's fees for a transcript cannot be taxed as costs.

(Cal.) *Senior v. Anderson* (1900), 130 Cal. 290, 62 Pac. 563.

The cost of a transcript cannot be taxed in a second action when it was stipulated that either party might use as evidence the stenographer's minutes of testimony taken in a former action between the same parties, and the cost of which had been provided for in that action.

(N. Y.) *In re Metropolitan El. R. Co.* (1892), 64 Hun 635, 46 N. Y. S. R. 138, 18 N. Y. S. 899.

When a stenographer is appointed under a statute authorizing a judge to employ a stenographer upon the application of either party, and to determine the compensation to be paid which will be taxed as costs, the fees of a stenographer who is employed upon request, cannot be recovered as costs when the record does not show that the court has determined the amount.

(Tex.) *Mansfield v. Hogsett* (1901), 25 Tex. Civ. App. 66, 60 S. W. 785.

A statute which authorizes the taxing of a stenographer's fee "in every case" does not include a garnishment process.

(Mo.) *Mechanics etc. Bank v. Glaser* (1890), 40 Mo. App. 371.

A general direction to tax costs and disbursements, is too indefinite to permit the taxation of stenographer's fees where a reference has been ordered on a motion.

(N. Y.) *Ward v. Ward* (1892), 23 Civ. Pro. 61, 22 N. Y. S. 903.

In the absence of a stipulation, stenographer's fees cannot be taxed as costs in proceedings to investigate the fiscal affairs of the municipality.

(N. Y.) *Matter of Town of Hempstead* (1899), 36 App. Div. 321, 55 N. Y. S. 345.

Code of Civ. Pro., § 1866, authorizing the taxation of legal fees paid stenographers for per diem and for copies, as disbursements, is limited to fees paid official stenographers, and does not authorize the taxation of such disbursements paid to private stenographers who attended the trial of an action in the place of the official stenographer by the consent of the parties and of the court.

(Mont.) *Mont. Ore Purch. Co. v. Boston & M. etc. Co.* (1902), 27 Mont. 288, 70 Pac. 1114.

Under a statute which provides that in all cases, except criminal, when a stenographer is employed, his pay shall be taxed as costs in the case, and when there is no requirement in the statute that any party to a civil action shall employ or assist in employing a stenographer to take the case, a party to a civil case cannot complain of the refusal of the other to assist in employing a stenographer.

(Wyo.) *Chosen Friends' etc. League v. Otterson* (1897), 7 Wyo. 89, 50 Pac. 194.

Under *Hurd's Rev. St.* 1908, c. 53, providing that the master in chancery shall be allowed fifteen cents per hundred words for taking and reporting testimony under order of court, it is error to tax as costs the fee of the shorthand court reporter for making a transcript of the testimony taken before the master. Allowance under that statute can only be made to the master, and he is entitled to it, whether he transcribes the testimony or procures a reporter to do it. Ch. 37, §§ 82a and 82b, providing for the appointment by the circuit court of shorthand reporters and for taxing transcript fees, do not apply to the taking of testimony before a master in chancery.

(Ill.) *Ruddy v. McDonald* (1910), 244 Ill. 494, 91 N. E. 651.

On a hearing in damages before assessors sums paid by the prevailing party under an agreement between counsel for the hiring of a stenographer were properly refused as an item of costs.

(Mass.) *Boston Belting Co. v. Boston* (1903), 183 Mass. 254, 67 N. E. 428.

The reporter's fee for a transcript of the record used by the defendant in preparing its bill of exceptions on appeal should not be taxed as costs.

(U. S.) *Pine River Logging Co. v. United States* (1901), 186 U. S. 279, 22 Sup. Ct. 920, 46 L. Ed. 1162.

At a hearing before a master the party who calls a witness must pay the expense of taking the direct and redirect examination of such witness, but his adversary must pay the expense of taking the cross and re-cross examination.

(U. S.) *Brickhill v. Mayor of New York* (1893), 55 Fed. (C. C.) 565.

#### 6K 2—Taxation of Fees, When Not Allowed—For Transcripts Required by Court for Its Own Use.

Money paid by order of court for a transcript cannot be allowed as a part of the costs.

(N. Y.) *Cohen v. Weill* (1900), 32 Misc. 198, 65 N. Y. S. 695.

When parties to a proceeding before a referee agree to the employment of a stenographer to be paid for by them in equal proportion, the cost of an extra transcript which the referee orders for his own use, is embraced within the agreement and is not to be taxed against the unsuccessful party.

(N. Y.) *Mark v. Buffalo* (1881), 87 N. Y. 184.

There is no authority for taxing an additional copy of the testimony for the convenience of the court, in a bankruptcy matter, whether one or two copies have been made.

(U. S.) *In re Todd* (1901), 109 Fed. (D. C.) 265, 6 Am. B. R. 88.



A stenographer's fees for reporting, for the court, the argument of plaintiff's counsel, cannot be taxed, in the absence of an agreement by the parties that it shall be taxed.

(U. S.) *Hussey v. Bradley* (1864), 5 Blatch. (C. C.) 210.

Under Laws 1915, c. 224, and Judiciary Law, § 116, item of \$3 for stenographer's fees for furnishing copy of minutes to official referee was not allowable against the defendant.

(N. Y.) *City Tax Lien Co. v. Murray* (1915), 154 N. Y. S. (N. Y. Sup.) 300.

### 6K 3—Taxation of Fees, When Not Allowed—For Transcripts for Party's Own Use.

The money paid for a transcript for a party's own convenience cannot be taxed as costs.

(Cal.) *Senior v. Anderson* (1900), 130 Cal. 290, 62 Pac. 563.

(Mich.) *Detroit etc. R. Co. v. Hayt* (1884), 55 Mich. 347, 21 N. W. 567, 911.

(N. Y.) *Hamilton v. Butler* (1865), 30 How. Pr. 36, 19 Abb. Pr. 446, 27 N. Y. Super. Ct. 654; *Spring v. Day* (1873), 44 How. Pr. 390; *Varnum v. Wheeler* (1886), 9 Civ. Pro. 421; *Pfandler etc. Co. v. Pfandler* (1886), 39 Hun 191, 3 How. Pr. (N. S.) 253; *Pfandler etc. Co. v. Sargent* (1887), 43 Hun 154, 5 N. Y. S. R. 413; *Whitney v. Roe* (1894), 75 Hun 508, 57 N. Y. S. R. 683, 27 N. Y. S. 511; *Shaver v. Eldred* (1895), 86 Hun 61, 66 N. Y. S. R. 783, 33 N. Y. S. 158.

(U. S.) *Gunther v. Liverpool etc. Ins. Co.* (1882), 20 Blatch. (U. S.) 390, 10 Fed. (C. C.) 830; *Wooster v. Handy* (1885), 23 Fed. (C. C.) 49; *The William Branfoot* (1892), 8 U. S. App. 129, 3 C. C. A. 155, 52 Fed. 390; *Monahan v. Godkin* (1900), 100 Fed. (C. C.) 196.

The court has no authority to tax the cost of transcribing the stenographer's notes, furnished upon the plaintiff's demand, after a mistrial, against the defendant, at whose request the stenographer was employed, under Shannon's Code, Pars. 4695-4697, providing that in case of appeal, a transcript of the stenographer's notes, if one has been employed at the request of a party, shall be made a part of the bill of exceptions, and the party at whose instance the stenographer was employed, shall be responsible for his compensation for the work done by him, as the statute merely contemplates the case of an appeal.

(Tenn.) *Louisville & Nashville R. R. Co. v. Ray* (1898), 101 Tenn. 1, 46 S. W. 554.

The stenographer's transcript of the testimony of the trial in the court below is not a proper item of costs to be recovered on appeal, whether procured for the purpose of preparing the statement of facts on appeal or used as the statement itself.

(Wash.) *Brown v. Winehill* (1892), 4 Wash. 98, 29 Pac. 927; *Tingley v. Bellingham Bay Boom Co.* (1893), 5 Wash. 644, 33 Pac. 1055.

In the absence of a statute allowing it, a party who is granted costs cannot tax the stenographer's fee for a transcript required to perfect the appeal record.

(S. D.) *Elfring v. New Birdsall Co.* (1903), 17 S. D. 350, 96 N. W. 703.

Under Stats., § 4639, requiring the official court stenographer, upon direction of the judge, either upon his own motion, or upon the motion of either party, to take stenographic notes of the testimony in an action, and "upon the motion of either party" to cause a full transcript of the same to be made, the fee of the stenographer for such transcript cannot be taxed as a part of the costs against the unsuccessful party unless the transcript was made by order of court.

(Ky.) *Albin v. Louisville Ry. Co.* (1902), 114 Ky. 982, 67 S. W. 17.

Carbon copies ordered for a party's own use are not taxable as costs.

(U. S.) *Atwood v. Jaques* (1894), 63 Fed. (C. C.) 561.

Amounts paid for transcript of the testimony for the use of the attorney during the progress of the trial, unless by agreement, are not taxable disbursements.

(Minn.) *Salo v. Duluth etc. R. R. Co.* (1914), 124 Minn. 361, 145 N. W. 114.

(Wis.) *Wis. S. F. Co. v. Lumber Co.* (1907), 132 Wis. 1, 111 N. W. 237.

A party is not entitled to have the cost of three copies of the reporter's minutes taxed as part of the costs, but only the cost of one copy; and while Laws 1907, c. 547, allows the reporter to do the work of preparing a bill of exceptions, it was not provided that his additional work in this regard should be taxed against the losing party.

(Wis.) *Buehler v. Staudenmayer* (1911), 146 Wis. 25, 131 N. W. 986.

The expense of the transcript of an examination for the discovery of assets conducted in the interest of general creditors in a bankruptcy matter should not be allowed to deplete the funds to be paid preferred creditors, but such expense must be borne by the creditors who procured the examination.

(U. S.) *In re Rozinsky* (1900), 101 Fed. 229, 3 Am. B. R. 830.

A transcript of the stenographer's notes taken under a stipulation, which is given for the purpose of preparing a bill of exceptions, is not obtained for use on the trial within the meaning of U. S. Rev. St., § 983, and cannot be taxed as costs.

(U. S.) *Monahan v. Godkin* (1900), 100 Fed. (C. C.) 196.

When the defendant orders the notes written out to assist in the preparation of a motion for a new trial, and before the judgment is reversed on appeal, the reporter's fees cannot be taxed as costs, as they are not a part of the costs on appeal.

(Cal.) *Bank of Woodland v. Hiatt* (1881), 59 Cal. 580.

Stenographer's fees paid out in preparing affidavits in the appellate court will not be allowed as a part of the costs.

(S. D.) *Sorenson v. Donahue* (1899), 12 S. D. 204, 80 N. W. 179.

There is no express authority under the statute providing for stenographers in counties having less than 45,000 inhabitants (R. S. 1899, c. 162, art. 4) to tax as costs the sum which the litigant pays the stenographer for a transcript of such portion of the testimony as he may order for use in the appellate court.

(Mo.) *Baldwin v. Boulware* (1900), 82 Mo. App. 321.

#### 6K 4—Taxation of Fees, When Not Allowed—As Necessary Disbursements.

The charges for a copy of the stenographer's minutes procured for the purpose of making a motion for a new trial, cannot be allowed as a disbursement in an action.

(N. Y.) *Whitney v. Roe* (1894), 75 Hun 508, 57 N. Y. S. R. 683, 27 N. Y. S. 511.

In the absence of a stipulation allowing it, the stenographer's fees on a trial before a referee cannot be taxed as a necessary disbursement.

(N. Y.) *Colton v. Simmons* (1878), 14 Hun 75; *Nugent v. Keenan* (1886), 53 N. Y. Super. Ct. 530, 1 N. Y. S. R. 708; *Griggs v. Guinon* (1892), 29 Abb. N. Cas. 144; *Baff v. Elias* (1912), 152 App. Div. 226, 136 N. Y. S. 563; *Hertzberg v. Elvidge* (1913), 80 Misc. 290, 142 N. Y. S. 211.

A stenographer's fee cannot be taxed as a necessary disbursement, when the transcript was not ordered from day to day during the trial and the defeated party did not appeal.

(N. Y.) Kahn v. Norrie (1875), 4 Hun 72.

Where one of the parties orders the stenographer's minutes to be furnished during the trial with a view to using them to prepare amendments to the case on appeal, he may not tax as disbursements any charges for expediting the minutes.

(N. Y.) Pratt v. Clark (1908), 124 App. Div. 248, 108 N. Y. S. 734.

Stenographer's fees are disbursements and not costs.

(N. Y.) Down v. McGourkey (1878), 15 Hun 444.

Under Code Civ. Pro., § 3256, the cost of a copy of the stenographic notes of a former trial for the use of a party on a subsequent trial, is not a necessary disbursement and cannot be taxed as such.

(N. Y.) Hamilton v. Butler (1865), 19 Abb. Pr. 446, 30 How. Pr. 36, 27 N. Y. Super. Ct. 654; Spring v. Day (1873), 44 How. Pr. 390; Pfandler etc. Co. v. Pfandler (1886), 39 Hun 191, 3 How. Pr. (N. S.) 253; Hudson v. Erie R. Co. (1901), 57 App. Div. 98, 68 N. Y. S. 28; Gilmour Mfg. Co. v. Stettler (1908), 58 Misc. 361, 109 N. Y. S. 667; Vogel Co. v. Reinhardt (1915), 89 Misc. 606, 153 N. Y. S. 906.

The expense of a carbon copy of the transcript of evidence on appeal is not a proper disbursement.

(Or.) Litherland v. Cohn Real Est. & Inv. Co. (1909), 54 Or. 71, 102 Pac. 303.

When a statute allows the employment of a stenographer upon the direction of the court, and provides that the court may order the expense thereof to be paid by the parties, the part paid by the successful party cannot be taxed as costs in the case as a necessary disbursement.

(N. Y.) Arnoux v. Phelan (1860), 21 How. Pr. 88; Gilman v. Oliver (1862), 14 Abb. Pr. 174, 22 N. Y. Super Ct. 589.

A stenographer's fees for a transcript are not taxable as a disbursement even when procured to enable a party to propose amendments to a case.

(N. Y.) Pfandler etc. Co. v. Sargent (1887), 43 Hun 154, 5 N. Y. S. R. 413.

Where the parties before a referee agree to employ a stenographer, and that each party shall pay one-half of his fees, the successful party cannot tax the amount paid by him as a disbursement.

(N. Y.) Nugent v. Keenan (1886), 53 N. Y. Super. Ct. 530, 1 N. Y. S. R. 708.

Where plaintiff refused to contribute to the expense of a stenographer, defendant on being successful, *held*, not entitled to have the cost of having the testimony taken by a stenographer employed by him, taxed to plaintiff.

(U. S.) Sedlacek v. Bryan (1912), 192 Fed. (C. C.) 361.

Where after trial plaintiff gave notice of appeal, and on serving proposed case and exceptions tendered the use of his copy of the stenographer's minutes to the defendant to be used in preparing amendments, such tender was made in proper time and defendant was not entitled to tax as part of the disbursements on the appeal the cost of a second copy of the minutes obtained by him from the stenographer.

(N. Y.) Adams Laundry Mach. Co. v. Prunier (1913), 157 App. Div. 153, 141 N. Y. S. 803.

In an appeal from the Municipal Court, the original transcript of the shorthand notes being on file in the clerk's office, an expenditure by respondent for a copy of the stenographer's minutes will not be taxed as a disbursement.

ment, as an inspection of the stenographer's minutes may be made by respondent at the clerk's office whenever necessary.

(N. Y.) Wiener v. Rudinsky (1913), 80 Misc. 234, 140 N. Y. S. 948.

The cash paid to the official reporter of the trial court for a transcript of the evidence is not recoverable as costs, unless the order directing the reporter to transcribe his notes was made as prescribed by Code Civ. Pro., § 274.

(Cal.) Blair v. Brownstone Oil & R. Co. (1913), 20 Cal. App. 316, 128 Pac. 1022.

Either party may have the stenographer's notes transcribed and filed and the costs taxed, and when filed the transcript becomes a part of the record, which may be used in preparing a bill of exceptions; but the cost of copying it for use in a bill of exceptions is no part of the disbursements.

(Or.) Allen v. Standard Box & Lbr. Co. (1908), 53 Or. 18, 98 Pac. 509; Sommer v. Compton (1909), 53 Or. 341, 100 Pac. 289; McGee v. Beckley (1909), 54 Or. 250, 103 Pac. 61.

In a legal action money paid for a transcript must be taxed in the trial court, and cannot be entered on appeal as disbursements.

(Or.) DeVall v. DeVall (1910), 57 Or. 128, 110 Pac. 705; Delovage v. Old Oregon Creamery Co. (1915), 149 Pac. 317.

#### 6K 5—Taxation of Fees, When Not Allowed—In Criminal Cases.

In a criminal case the fees of the reporter cannot be taxed as costs against the defendant.

(Cal.) Petty v. San Joaquin County Court (1872), 45 Cal. 245.

The state is not liable to the county, upon the successful prosecution of a felony in the superior court, for such costs as stenographer's fees, etc.

(Wash.) State ex rel v. Grimes (1894), 7 Wash. 445, 35 Pac. 361.

The superior court, in the absence of statute, is without jurisdiction to order the costs of an appeal prosecuted by a convicted defendant in *forma pauperis*, to be charged against the county and to be paid by the county.

(Wash.) State ex rel v. Superior Court Lewis Co. (1903), 32 Wash. 80, 72 Pac. 1028.

#### 6L Review of Action of Court as to Fees.

The allowance by a coroner of fees to a stenographer for taking down testimony will not be disturbed unless it is shown that some illegal claim is allowed.

(Mich.) Turner v. Smith, Calhoun Circuit Judge (1894), 101 Mich. 212, 59 N. W. 398.

A trial judge who refuses to order the court stenographer to furnish a transcript of the proceedings to a person allowed to sue as a poor person without the payment of the fees chargeable therefor, will be required by mandamus to make such an order.

(Mo.) State ex rel v. Hitchcock (1913), 171 Mo. App. 109, 153 S. W. 546.

An order allowing \$20 for two per diems, commencing at 11 o'clock one day and ending at 1:15 P. M. the next day, held a proper allowance and not an abuse of discretion by the court.

(Utah) Andreson v. Ogden Union Ry. Co. (1891), 7 Utah 396, 26 Pac. 1119.

In the absence of a statute requiring each party to pay one-half of the reporter's per diem before trial, the court cannot in pursuance of a rule of court to that effect, order judgment in favor of the opposing party where

one party refuses to comply with such rule. If plaintiff had desired to proceed with the trial, he could have deposited with the clerk the whole of the reporter's per diem, and if he obtained judgment, included the amount in his cost bill.

(Cal.) Meacham v. Bear Valley Irrig. Co. (1904), 145 Cal. 606, 79 Pac. 281.

The auditing of a stenographer's bill is not a civil action from which a writ of error lies to the supreme court.

(W. Va.) Robinson v. LaFollette (1899), 46 W. Va. 565, 33 S. E. 288.

### 6M Right of Court to Compel Payment of Fees.

The court has the power to compel by rule, an appellant to pay a reporter for making a transcript in a cause, as in any other case in which the allowance to an officer is to be made by the court.

(Ky.) Marks v. Graham (1881), 2 Ky. Law Rep. 222.

(Cal.) See Meacham v. Bear Valley Irrig. Co. cited at 6L of this digest.

Service of notice upon the clerk that the reporter's fees have not been paid, works as a stay of the entry of judgment, unless the court otherwise orders under § 274 of the Code of Civ. Pro.

(Cal.) Taylor v. McConigle (1898), 120 Cal. 123, 52 Pac. 159.

When a shorthand reporter has voluntarily taken notes in an action without demanding a deposit from the parties to an action, and the trial has terminated and judgment been entered, he stands in no more favorable relation than that of a creditor of the parties to the action for the amount of his fees, and a judge has no right to refuse to settle a bill of exceptions until the stenographer's fees are paid, and if the judge refuses to settle the bill he will be compelled by mandamus so to do.

(Cal.) James v. McCann (1892), 93 Cal. 513, 29 Pac. 49.

The refusal of the treasurer of the city and county of San Francisco to obey an order of the judge directing him to pay certain moneys to the stenographic reporter of the judge's court, cannot justify proceedings against him for contempt, and if ordered to be imprisoned therefor, he will be released upon habeas corpus.

(Cal.) Ex parte Truman (1899), 124 Cal. 387.

The judge has power, under Civ. Code 1895, § 4447, to enter up judgment in favor of the stenographer against the party or parties by whom the judge prescribes compensation for taking down the proceedings shall be paid; and all that is necessary for the stenographer to obtain such judgment is for him to render his bill to the judge and for the judge to be satisfied that the same is correct and just, at the rate of compensation fixed by him.

(Ga.) Seaboard Airline Ry. v. Memory (1906), 126 Ga. 183, 55 S. E. 15.

The judge has no power, upon the ex parte application of the stenographer, to render a judgment in his favor against a party to a civil case, in which he has taken down the proceedings, for the amount of the stenographer's bill for a transcript, from his shorthand notes, of the evidence and charge of the court in such case, prepared and delivered to such party at his request.

(Ga.) Seaboard Airline Ry. v. Memory (1906), 126 Ga. 183, 55 S. E. 15.

**6N Mandamus to Compel Payment of Fees.**

When the compensation of a stenographer is fixed by court under a statute, the county auditor shall draw a warrant on the treasurer for the amount which the court shall direct, and he may be mandamused so to do.

(Cal.) McAllister v. Hamlin (1890), 83 Cal. 361, 23 Pac. 357.

(N. J.) Knight v. Ocean County Freeholders (1887), 49 N. J. Law 485, 12 Atl. 625.

Mandamus will lie to compel a county treasurer to pay an order of a judge for the payment of an official stenographer when by statute it is made the duty of the judge to issue such order.

(Ga.) Lamb v. Toomer (1892), 91 Ga. 621, 17 S. E. 966.

A petition for mandamus against a county treasurer to compel payment to a court stenographer for services in criminal cases must state that the treasurer has funds in his hands applicable to the payment of the demand.

(Cal.) Stevens v. Truman (1899), 127 Cal. 155, 59 Pac. 397.

Mandamus will not lie to compel the county treasurer to pay a certificate issued by a city judge to a shorthand reporter, as the act of 1897 authorizing judges of the circuit courts to appoint shorthand reporters does not apply to the city courts.

(Ill.) Bartling v. People (1900), 92 Ill. App. 410.

Mandamus will not lie to compel an auditor to allow a stenographer's account, when by statute he is allowed a discretion in regard to the allowance or rejection of such claim.

(W. Va.) Supervisors v. Minturn (1870), 4 W. Va. 300; Robinson v. LaFollette (1899), 46 W. Va. 565, 33 S. E. 288.

Upon application for mandamus to compel a county treasurer to pay the stenographer's fees, when there is no statute in the state prescribing the fees which should be charged, although the statute provides for the appointment of a stenographer and that his fees shall be paid by the county treasurer on the certificate of the magistrate; *held*, that the certificate of the magistrate that the services had been rendered was not a demand upon the county treasurer, and that he was not bound to pay.

(Cal.) Fox v. Lindley (1881), 57 Cal. 650.

Under the act of Oct. 12, 1885, in regard to the compensation of official stenographers, and which provides that they shall be paid for taking down testimony in the trial of such criminal cases as are required by law to be reported on the certificate and order of the judge of the superior court, county authorities, such as boards of commissioners of roads and revenues, have no right to audit or order paid such orders, and therefore mandamus will not lie to compel them to do so.

(Ga.) Lamb v. Toomer (1892), 91 Ga. 621, 17 S. E. 966.

Under Gen. Laws, 1888-9, p. 25, mandamus will issue to compel the state auditor to issue a warrant for the payment of the court reporter's salary as required by said act, and the fact that there are no funds in the hands of the state treasurer to pay the same is no excuse for a failure to issue the warrant.

(Idaho) Gilbert v. Moody (1891), 3 Idaho 3, 25 Pac. 1092.

Under a statute providing a stenographer's salary of \$2,000 which shall be apportioned by the judge among the counties embraced in the circuit, a stenographer cannot compel a county to pay him any specific sum of

salary until he has shown that such amount was apportioned by the judge to such county.

(Mich.) *Goodale v. Marquette County Supervisors* (1880), 45 Mich. 47, 7 N. W. 207.

A judge can be compelled by mandamus to issue an order on the county treasurer in favor of a reporter for fees for services in criminal cases, where it appears that the court had ordered such services to be performed; but the finding of the lower court as to whether or not such an order had been made is conclusive and will not be reviewed by the appellate court on appeal.

(Cal.) *Pipher v. Superior Court* (1906), 3 Cal. App. 627, 86 Pac. 904.

Where, on presentation of an official stenographer's claim for fees in a criminal case, the judge allowed a portion of the claim, but disallowed a portion of the claim for a transcript because it had not been ordered by him, as contended by the stenographer, mandamus will not lie to compel the judge to make a different finding of fact as to the order of such transcript and to compel the allowance of the balance of the claim.

(Cal.) *Pipher v. Superior Court* (1906), 3 Cal. App. 627, 86 Pac. 904.

## 7—BILL OF EXCEPTIONS.

- A Notes when not a bill of exceptions.
- B Notes as bill of exceptions.
- C Preparation of bill of exceptions.
- D Bill of Exceptions should be in condensed form.
- E Party cannot be compelled to incorporate transcript in bill of exceptions.
- F Filing of transcript a necessary precedent.

### 7A Notes When Not a Bill of Exceptions.

Notes are not a bill of exceptions.

- (Dak.) *St. Croix Lumber Co. v. Pennington* (1881), 2 Dak. 467, 11 N. W. 497.
- (N. D.) *Goose River Bank v. Gilmore* (1893), 3 N. D. 188, 54 N. W. 1032.
- (Okla.) *U. S. v. Choctaw, O. G. R. Co.* (1895), 3 Okla. 465, 41 Pac. 729.

Notes cannot take the place of a bill of exceptions.

- (S. D.) *Merchants Nat. Bk. v. McKinney* (1894), 6 S. D. 58, 60 N. W. 162.

A stenographer's notes can be made available on appeal only by being made a part of the bill of exceptions. The transcript of the stenographer alone will not answer.

- (Ark.) *Moore v. State* (1898), 65 Ark. 330, 46 S. W. 127; *Snyder v. State* (1908), 86 Ark. 456, 111 S. W. 465.
- (Ky.) *Ches. & Ohio Co. v. Smith* (1897), 101 Ky. 707, 42 S. W. 538.
- (Or.) *McQuaid v. Portland & V. R. R. Co.* (1890), 19 Or. 535, 25 Pac. 26.

An instrument purporting on its face to be the stenographic report of the trial, and being in the usual stenographic form, is not a sufficient bill of exceptions.

- (Ala.) *Lucas v. Mays* (1911), 2 Ala. App. 497, 56 So. 593.

A skeleton bill of exceptions does not authorize consideration of testimony subsequently transcribed and certified by the official reporter, and it does not appear that the same was approved by the trial judge.

- (Ark.) *Grand Lodge A. O. U. W. v. Dreher* (1912), 151 S. W. 435.

Evidence which is not incorporated, but merely called for in the bill of exceptions will be disregarded, if a transcript thereof was not made at the time of the signature of the bill. Evidence which is referred to in a bill of exceptions should be written out, and a copy of it should be attached to the bill at the time of signature, so as to render it capable of identification.

- (Mo.) *Gorwyn v. Anable* (1892), 48 Mo. App. 297.

The trial judge cannot sign a skeleton bill of exceptions directing the clerk to copy in a reporter's transcript of the evidence not yet made. It is the business of the judge who tried the case to say what evidence was introduced, and he cannot devolve this duty upon the clerk, the reporter or counsel.

- (Mo.) *Forbs v. St. L., I. M. & S. Ry. Co.* (1904), 107 Mo. App. 661, 82 S. W. 562.

Under Code Civ. Pro., § 953a, providing for the authentication of a transcript in lieu of the bill of exceptions, the phonographic report of the trial must be settled and allowed by the judge, and certified by him as correct, before it can take the place of a bill of exceptions.

- (Cal.) *Williams v. Lane* (1910), 158 Cal. 39, 109 Pac. 873.



An agreement of counsel on a skeleton bill of exceptions does not, together with such bill, make the stenographer's notes part of the report, the only reference thereto in the bill being "Stenographer's notes, see pages ———), " the matter sought to be made a part of the record being required to be so pointed out as to identify it beyond reasonable doubt.

(Miss.) Grand Court v. Downs (1910), 98 Miss. 740, 53 So. 417.

An agreement by counsel that the stenographer's notes shall constitute the record on appeal will not be considered by the Supreme Court.

(N. C.) Bucken v. South & W. R. Co. (1911), 157 N. C. 443, 73 S. E. 137.

The Supreme Court cannot review the evidence unless the same is incorporated into the record. The stipulation of counsel that the testimony as taken by the court stenographer shall be the record in the case does not supply the place of a bill of exceptions duly authenticated and certified.

(Colo.) City of Denver v. Capelli (1877), 3 Colo. 235; Molandin v. Railroad Co. (1877), 3 Colo. 173; Ross v. Duggan (1879), 5 Colo. 85; McKenzie v. Ballard (1890), 14 Colo. 426, 24 Pac. 1.

(S. D.) Merchants Nat. Bk. v. McKinney (1894), 6 S. D. 58, 60 N. W. 162.

Where the judge who tried the case resigns, and the evidence was taken stenographically, his successor, in the exercise of discretion may sign and allow a bill of exceptions under Rev. St., § 953, as amended.

(U. S.) McIntyre v. M. W. A. (1912), 200 Fed. (C. C. A.) 1.

A transcript of the reporter's notes not allowed by the trial judge cannot be considered as a bill of exceptions.

(Ariz.) Leatherwood v. Richardson (1907), 11 Ariz. 163, 89 Pac. 503.

A mere stenographer's transcript that has never been submitted to the court as a bill of exceptions, and to be settled by the judge, is not sufficient.

(Utah) Snow v. Tarpey (1902), 25 Utah 126, 69 Pac. 718.

The exemplified transcript of the stenographer's notes made by Gen. St., 1902, § 695, prima facie a correct statement of the testimony and proceedings, and a part of the official record, cannot supply the place of a finding, and the Supreme Court cannot determine thereon from the testimony what facts were found and what conclusions of law were drawn.

(Conn.) Lippitt v. Bidwell (1914), 87 Conn. 609, 89 Atl. 347.

A longhand transcript of the evidence not in compliance with the statute, is not a bill of exceptions containing the evidence.

(Ind.) Rector v. Druley (1909), 172 Ind. 332, 88 N. E. 602.

A stenographic report of the evidence in a case, not being a part of the record, cannot be considered as presenting questions of law on an appeal.

(Mass.) Hicks v. Graves (1907), 194 Mass. 589, 80 N. E. 590.

A stenographer's notes containing the detailed proceedings of the trial are not properly a part of the appellate record, and cannot be considered by the court of appeals.

(Tex.) Kell Milling Co. v. Bank of Miami (1913), 155 S. W. (Civ. App.) 325.

In order that the instructions of the court taken stenographically may form part of the transcript of the record and be used on appeal, it is necessary that they should bear indorsements setting out the decision of the court and signed by the judge; and in this way the objections made thereto may be considered the same as if they were contained in a bill of exceptions or statement of facts.

(Porto Rico) *People v. Torres* (1905), 9 P. R. 396; *People v. Dones* (1905), 9 P. R. 423; *People v. Diaz* (1906), 10 P. R. 441; *People v. Robles* (1906), 10 P. R. 470.

The notes taken by the stenographer during the trial cannot serve on appeal as a basis for a consideration of the findings upon evidence, inasmuch as the evidence should be set out in a bill of exceptions or a statement of facts, in the absence of which it will be presumed that the verdict is according to law.

(Porto Rico) *People v. Bocanegra* (1905), 9 P. R. 490.

The notes taken by the stenographer during the progress of the trial of a case cannot be made to form part of the record on appeal, even though the same may be certified by the judge of the district court.

(Porto Rico) *People v. Brenes* (1905), 9 P. R. 503.

Although the notes of the stenographer constitute prima facie the minutes of the court, the latter have never been deemed to include in their signification the testimony of witnesses; wherefore such notes cannot be considered as a bill of exceptions, or statement of facts, nor can the same be used as a substitute therefor, nor has the word *minutes* the same signification as the word *record*.

(Porto Rico) *People v. Elligier* (1905), 9 P. R. 357.

In order that the Supreme Court may consider on appeal the evidence taken at the trial, it is necessary that the same be set forth in a bill of exceptions or statement of facts, and the stenographer's notes cannot be used as a substitute for either of these documents.

(Porto Rico) *People v. Duran* (1905), 9 P. R. 78; *People v. Merced* (1905), 9 P. R. 480; *People v. Ramos* (1906), 10 P. R. 7; *Roman v. American R. R. Co.* (1906), 10 P. R. 52; *Orteiza v. Martinez* (1906), 11 P. R. 29; *Lopez v. American R. R. Co.* (1906), 11 P. R. 148; *Estate of Iglesias v. Bolivar* (1906), 11 P. R. 422; *Requena v. Mesa* (1906), 11 P. R. 572; *Del Toro v. Municipal Court* (1910), 16 P. R. 89; *People v. Santiago* (1910), 16 P. R. 446; *Orama v. Oyanguren* (1913), 19 P. R. 294.

A transcript of the testimony at the trial certified by the official stenographer, but not certified or identified by the trial judge, is not a bill of exceptions so as to authorize the court on appeal to consider technical objections to the matters set out in the transcript.

(Or.) *Van De Wiele v. Garbade* (1912), 60 Or. 585, 120 Pac. 752.

A copy of the stenographer's notes of the evidence and certified copies of the depositions can only be considered by the Court of Civil Appeals when incorporated in a statement of facts prepared in conformity to statute.

(Tex.) *Dealy v. Shepherd* (1909), 54 Tex. Civ. App. 80, 116 S. W. 638.

Matters as to the admission of evidence not presented in separate bills, but occurring in the stenographic transcript of the facts adduced, cannot be reviewed.

(Tex.) *Mays v. State* (1906), 50 Tex. Cr. Rep. 391, 97 S. W. 703.

Excerpts from the testimony certified to by the reporter, but not made a part of the bill of exceptions may not be used in testing a finding.

(Vt.) *Landon v. Hunt* (1909), 82 Vt. 322, 73 Atl. 865.

Acts of 1905, c. 112, does not provide for bills of exception to be considered, as shown by the stenographer's report, on any other subject than the admissibility of evidence. It does not provide that bills of exception as to pleadings and other matters shall be deemed bills of exceptions.

(Tex.) *Ex parte Denning* (1907), 50 Tex. Cr. Rep. 629, 100 S. W. 402.

A transcript of stenographer's notes made as required by Act 31 Leg. (1 Ex. Sess.) c. 39, § 5, not signed by counsel for the parties, or signed

or approved by the court, held not to be considered as a statement of facts, though no objection is made.

(Tex.) *Buster v. Woody* (1912), 146 S. W. (Civ. App.) 689; *Wright v. State* (1913), 70 Tex. Cr. Rep. 73, 156 S. W. 624.

Under Act 31 Leg. (1 Ex. Sess.) c. 59, the stenographer's transcript was never intended to be filed in the appellate court, but was to be used by the party ordering the transcript in preparing the statement of facts.

(Tex.) *Rader v. Galveston, etc., Ry. Co.* (1911), 137 S. W. (Civ. App.) 718.

A transcript of the reporter's notes of oral testimony and proceedings of a trial, certified to by the trial judge to be "a true and correct statement of all the proceedings had in said case, and together with the exhibits attached contains all of the evidence introduced on the trial" is not a bill of exceptions required by statute.

(Or.) *Keady v. United Rys. Co.* (1910), 57 Or. 325, 108 Pac. 197.

Merely filing the stenographer's notes of the judge's charge and printing it in the paper book will not make it a part of the record unless it affirmatively appears that the filing was the act of the judge himself, or was done by his express direction, evidenced by his signature either to the charge itself or to the bill of exceptions.

(Pa.) *Smith v. Times Pub. Company* (1897), 178 Pa. 481, 36 Atl. 296, 35 L. R. A. 819.

No part of the reporter's transcript is a part of the record of a case unless incorporated in the bill of exceptions. The certificate of the judge as to the transcript, except as incorporated in his certificate to the bill of exceptions, does not make the transcript a part of the record.

(Wis.) *Semmens v. Walters* (1882), 55 Wis. 682, 13 N. W. 889.

Under Kentucky Stat. 1019a, providing that the transcript made by the stenographic reporter and filed in the clerk's office, when certified by the court to be correct, may be used in the court of appeals as part of the record, a transcript of the stenographer's notes which is certified as containing only all the oral evidence introduced, and which is not filed by order of court, cannot be treated as a bill of exceptions.

(Ky.) *Southern Ry. Co. v. Thurman* (1903), 25 Ky. Law Rep. 804, 76 S. W. 499.

The transcript of the evidence prepared by the official stenographer and required by § 4639, Stat. 1903, to be filed among the papers used in making up the bill of exceptions, does not become part of the record, although attached thereto, without an order of the court.

(Ky.) *Ill. Cent. R. R. Co. v. Howard* (1905), 27 Ky. Law Rep. 513, 85 S. W. 732.

Evidence in equity actions must be made a part of the bill of exceptions.

(Ky.) *Dupoyster v. Ft. Jefferson Imp. Co.* (1905), 28 Ky. Law Rep. 504, 89 S. W. 509; *Roemer v. Mottley* (1914), 161 Ky. 316, 170 S. W. 649.

Where the record fails to show that the stenographer's transcript of the evidence was filed in the circuit court, endorsed as filed, or directed to be filed by order of that court, and it is not referred to, identified by, or made a part of the record, it cannot be treated as a bill of exceptions.

(Ky.) *Leslie County v. Burt & Brabb Lbr. Co.* (1907), 32 Ky. Law Rep. 465, 105 S. W. 1188.

A mere reference to the stenographer's notes in the bill of exceptions is not sufficient to make the shorthand notes or a transcript thereof a part of the record, unless they are filed.

(Iowa) *Lowe v. Lowe* (1875), 40 Iowa 220.

Although a statute declares that the notes of an official stenographer are the best authority in any matter in dispute, yet a bill of exceptions is necessary to take the testimony up for review.

(Mont.) Raymond v. Thexton (1888), 7 Mont. 299, 17 Pac. 258; Sherman v. Higgins (1888), 7 Mont. 479, 17 Pac. 561.

(Nev.) State v. Larkln (1876), 11 Nev. 315.

(Pa.) Rosenthal v. Ehrlicher (1893), 154 Pa. 396, 26 Atl. 435; Connell v. O'Neill (1893), 154 Pa. 582, 26 Atl. 607; Commonwealth ex rel v. Arnold (1894), 161 Pa. 320, 29 Atl. 270; In re O'Brien (1903), 22 Pa. Super. Ct. 475.

Code § 3675 particularizes the duties of the reporter, but such acts are not made part of the record until certified, and when certified they only bring into the record what would not otherwise be there, and constitute a bill of exceptions. It is just as much the duty of the reporter to enter in his minutes the return of an improper as of a proper verdict, and he is required to note the action thereon.

(Iowa) State v. Novak (1899), 109 Iowa 717, 79 N. W. 465.

A stenographer's transcript of the evidence filed at a subsequent term cannot be considered, when the court has lost jurisdiction at the previous term by signing a bill of exceptions which did not contain the evidence.

(Ky.) Knecht v. Louisville Home Tel. Co. (1905), 28 Ky. Law Rep. 456, 121 Ky. 492, 89 S. W. 508; Dupouster v. Ft. Jefferson Imp. Co. (1905), 28 Ky. Law Rep. 504, 89 S. W. 509.

The notes of a stenographic reporter form no part of a bill of exceptions unless embodied therein or referred to in the bill so as to identify them.

(Cal.) People v. Taing (1879), 53 Cal. 602.

(N. M.) Rogers v. Richards (1896), 8 N. M. 658, 47 Pac. 719.

A transcript of the evidence by the shorthand reporter not containing the name of the cause except by endorsement on the outside not in the handwriting of the reporter, and not referred to in the certificate and not identified in any other manner is not sufficiently identified to become a part of the record, though inserted in the proper place in the bill of exceptions.

(Iowa) Joy v. Bitzer (1889), 77 Iowa 73, 41 N. W. 575, 3 L. R. A. 184.

Before a transcript of the evidence originally taken in shorthand can be used on appeal, it must be set out at length in the bill of exceptions.

(Ark.) Moore v. State (1898), 65 Ark. 330, 46 S. W. 127.

(Ind.) Woollen v. Wishmier (1880), 70 Ind. 108; Lowery v. Carver (1885), 104 Ind. 447, 4 N. E. 52; Marshall v. State (1886), 107 Ind. 173, 6 N. E. 142; Fahlor v. State (1886), 108 Ind. 387, 9 N. E. 297; Dick v. Mullins (1891), 128 Ind. 365, 27 N. E. 741; Shirk v. Coyle (1891), 2 Ind. App. 354, 27 N. E. 638.

(Iowa) Lowe v. Lowe (1875), 40 Iowa 220.

Where the clerk took the part of the original bill of exceptions containing the evidence and incorporated it in the transcript without copying it, but copied the remainder of the bill including the judge's certificate, the evidence is not properly in the record under § 661 nor under § 638a. Burns' Stats., 1901.

(Ind.) Mankln v. Penn. Co. (1902), 160 Ind. 447, 67 N. E. 229.

A statute providing that the original notes when filed in the office of the clerk shall become a part of the record and admissible as evidence in any case where material, does not dispense with the necessity for a bill of exceptions.

(Iowa) McAnnulty v. Seick (1882), 59 Iowa 586, 13 N. W. 743; State v. Hessian (1882), 58 Iowa 68, 12 N. W. 77; McCarthy v. Watrons (1886), 69 Iowa 260, 28 N. W. 602.

A statute providing that the notes of the shorthand reporter shall be deemed official and the best authority in any matter in dispute, does not

make the notes a part of the record without their being made so by the judge by certifying a proper bill of exceptions.

(W. Va.) *Tracy's Adm'x. v. Carver Coal Co.* (1905), 57 W. Va. 537, 50 S. E. 825; *Parr v. Currence* (1905), 58 W. Va. 523, 52 S. E. 496.

The minutes of a stenographer taken at the trial, in the absence of statute, are not official records, and can only be made a part of the record of a case by being incorporated in the case by bill of exceptions signed and settled by the judge.

(Dak.) *Golden Terra Min. Co. v. Smith* (1881), 2 Dak. 377, 11 N. W. 98.

The fact that a statute authorizes the minutes of the official stenographer to be used in settling the bill of exceptions, does not give them the character of record evidence.

(Mich.) *Edwards v. Heuer* (1881), 46 Mich. 95, 8 N. W. 717.

The filing of a transcript with the certificate of the judge and clerk's certificate, to the effect that the judge certified thereto, does not make the evidence properly on record so as to authorize its consideration on appeal, when there is no bill of exceptions.

(Ind.) *Smith v. American Crystal Monument Co.* (1902), 29 Ind. App. 308, 62 N. E. 1013.

The fact that a bill of exceptions recites the making of a transcript by the official stenographer, and of its examination and approval by the court and an order by the court that the transcript be made a part of the bill of exceptions, and commanding the clerk to attach a copy thereto, does not make the transcript a part of the bill, as the mere identification by the trial judge is insufficient to constitute such transcript a part of the bill of exceptions.

(Or.) *Nosler v. Coos Bay etc. R. & Nav. Co.* (1901), 40 Or. 305, 63 Pac. 1050, 64 Pac. 855.

The certificate of the stenographer, who transcribed his notes for an appeal, that the transcript contains all the evidence, cannot supply the certificate of the judge to that effect, or an omission of the bill of exceptions to show that it does.

(Mont.) *State v. Shepherd* (1899), 23 Mont. 323, 58 Pac. 868.

When a record on appeal includes a transcript of the evidence, but contains no bill of exceptions, the appellate court will not consider any question in regard to the admission, rejection or sufficiency of evidence.

(Ind.) *King v. Wright* (1901), 27 Ind. App. 600, 61 N. E. 796.

Under Rev. Codes, § 4434, as amended by Laws 1911, c. 119, a matter contained in the stenographer's transcript cannot be reviewed unless such transcript is settled by the judge.

(Ida.) *Chapman v. Averill Mach. Co.* (1915), 147 Pac. 785.

And see cases cited under 7B of this digest.

## 7B Notes as Bill of Exceptions.

When the transcript of the stenographic notes is properly attested, the transcript becomes a bill of exceptions.

(Pa.) *Connell v. O'Neil* (1893), 154 Pa. 582, 26 Atl. 607.

Where a stenographer is appointed under the provisions of the statute, his note of the bill of exceptions to the admission or rejection of evidence is sufficient, and it is not essential that the bill should be actually sealed by the judge.

(Pa.) *Chase v. Vandergrift* (1878), 88 Pa. 217.

There is a present tendency to uphold bills of exceptions when substantial justice will be thus promoted, and the purpose of the bills subserved, rather than to reject them on technical grounds.

(Mo.) *Patterson v. Yancey* (1903), 97 Mo. App. 681, 71 S. W. 845.

Under Rev. Codes, § 4434, as amended by Laws 1911, c. 119, the transcript of the evidence certified by the stenographer must be settled by the trial judge.

(Idaho) *Grisinger v. Hubbard* (1912), 21 Idaho 469, 122 Pac. 853; *Furey v. Taylor* (1912), 22 Idaho 605, 127 Pac. 676; *Edwards v. Anderson* (1913), 23 Idaho 508, 130 Pac. 1001; *Strand v. Crooked River M. & M. Co.* (1913), 23 Idaho 577, 131 Pac. 5; *Chapman v. Averill Mach. Co.* (1915), 147 Pac. 785.

No preliminary order that the case be reported is necessary under Code § 3675; if the proceedings are in fact taken down and duly certified, they become the record.

(Iowa) *State v. Welsh* (1899), 109 Iowa 19, 77 N. W. 369.

Where the reporter's notes were filed with the clerk prior to the filing of the skeleton bill of exceptions which directed the clerk to insert the evidence as shown by said notes therein, the bill of exceptions was sufficient to make the evidence a part of the record, though the notes when filed were not certified and no entry of the filing thereof was made in the clerk's record.

(Iowa) *Holscher v. Gehrig* (1904), 127 Iowa 369, 101 N. W. 759.

A call for the insertion of the evidence in a skeleton bill of exceptions will be sufficient to authorize the clerk to copy it into and make it a part of the record, when the transcript of evidence as made by the stenographer has been examined and approved by the judge and has been attached to the bill.

(Mo.) *State v. Dalton* (1891), 106 Mo. 463, 17 S. W. 700.

The statute making the shorthand notes and their extension a bill of exceptions does not deprive the court of the right to settle and approve a bill of exceptions according to the former practice.

(Iowa) *State v. Kehr* (1908), 137 Iowa 91; 114 N. W. 542.

All that a judge is required to authenticate in lieu of a bill of exceptions is the stenographic notes of the trial.

(Cal.) *Christenson Lumber Co. v. Seawell* (1910), 157 Cal. 405, 108 Pac. 276; *Lapique v. Super. Ct. of Orange County* (1912), 18 Cal. App. 50, 122 Pac. 80.

A reporter's transcript of the whole evidence taken prior to the denial of a motion for nonsuit is a proper bill of exceptions to present the court's alleged error in denying the motion for review on appeal.

(Or.) *Gobbi v. Dileo* (1911), 58 Or. 14, 113 Pac. 57.

When the court embodies in longhand in the bill of exceptions a transcript of the stenographic notes, he adopts them as his own.

(Ind.) *Stagg v. Compton* (1881), 81 Ind. 171; *Davis v. Liberty Gravel Road Co.* (1882), 84 Ind. 36; *Dennis v. State* (1885), 103 Ind. 142, 2 N. E. 349; *Ind. etc. R. R. Co. v. Quick* (1887), 109 Ind. 295, 9 N. E. 788, 925; *McCormick Harvesting Mach. Co. v. Gray* (1887), 114 Ind. 340, 16 N. E. 787; *Everman v. Hyman* (1891), 26 Ind. App. 165, 28 N. E. 1022, 84 Am. St. Rep. 284; *McCoy v. Able* (1892), 131 Ind. 417, 30 N. E. 528, 31 N. E. 453.

Where a judge orders a stenographer's notes filed, he adopts them as his own.

(Pa.) *Connell v. O'Neil* (1893), 154 Pa. 582, 26 Atl. 607.

When the testimony is taken by a stenographer by agreement of counsel and the transcript of the stenographer is approved by the court as a correct bill of exceptions and ordered filed, and is deposited with the clerk in the time provided by law, such transcript is a sufficient bill of exceptions, although the stenographer is not an official stenographer.

(Ark.) Young v. Gaut (1901), 69 Ark. 114, 61 S. W. 372.

If the shorthand notes are properly certified by the reporter and judge, and filed within the proper time, they become a part of the record without any special direction to that effect by the judge in his certificate, but if neither the notes nor the transcript are thus certified within the time for filing the bill of exceptions, they cannot be considered.

(Iowa) Bunyan v. Loftus (1894), 90 Iowa 122, 57 N. W. 685.

If the court in certifying to a bill of exceptions recognizes the person who took the evidence as the official stenographer, such stenographer becomes the de facto stenographer, and it is no exception to the bill of exceptions that he was not legally appointed.

(Iowa) Etter v. O'Neil (1891), 83 Iowa 655, 49 N. W. 1013; Meader v. Allen (1900), 110 Iowa 588, 81 N. W. 799.

Where a stenographer certifies that his report of the testimony signed and approved by the judge contains a full and accurate transcript of the shorthand notes of the oral testimony given on the trial of the case, and that this is all the evidence offered by either party or heard by the court and the jury on the trial of the case, the motions and exceptions made on the trial being fully set out, and the transcript is noted of record on the order book of the court as a bill of exceptions, it may be treated as a bill of exceptions under Code. Civ. Prac., Par. 335, which provides that no particular form of exceptions or bill of exceptions is required.

(Ky.) McKeever v. Kennedy (1897), 19 Ky. Law Rep. 845, 42 S. W. 114.

Under Code Civ. Prac., 335, relating to bills of exceptions, a copy of the stenographer's transcript approved by the court and filed for the purpose of appeal, will be considered and treated as a bill of exceptions, where it contains all the essentials of a bill of exceptions.

(Ky.) Louisville & A. R. Co. v. Phillips' Admr. (1912), 148 Ky. 49, 145 S. W. 1105.

Where a bill of evidence was made by the court stenographer and contained the statement over his official signature that it embraced all the evidence, and such statement, together with the bill as a whole, received the approval of the trial judge over his signature and was by him ordered to be filed; *held*, that the bill of evidence was a part of the record on appeal.

(Ky.) Slusher v. Pennington (1907), 31 Ky. Law Rep. 950, 104 S. W. 354.

Where the official stenographer's transcript contains all the evidence, and all exceptions and objections, and is certified to as correct by the stenographer and approved by the trial judge, and made a part of the record by an order of court, it is not necessary to put in a separate bill of exceptions the names of the witnesses who testified, nor any exceptions or objections relating to their evidence, or to any other evidence heard or offered, which appears in the stenographer's transcript.

(Ky.) Sinclair's Admr. v. Ill. Cent. R. R. Co. (1907), 30 Ky. Law Rep. 1040, 100 S. W. 236.

The fact that a reporter failed to furnish a transcript of the evidence within the time ordered by the judge, under § 4434 Rev. Codes, as amended

by c. 119, Laws of 1911, will not defeat an appeal if counsel has been guilty of no laches in the matter. The court will in all respects insist upon the prosecution of appeals with diligence, but Rule 77 of the Supreme Court Rules is directory and advisory only, and not mandatory.

(Idaho) Fischer v. Davis (1913), 24 Idaho 217, 133 Pac. 910.

Where a bill of exceptions signed by the judge was skeleton in form, but unmistakably referred to the reporter's notes of the evidence and directed the evidence thus taken to be inserted; *held*, sufficient.

(Iowa) Glenn v. Gleason (1883), 61 Iowa 28, 15 N. W. 659.

(W. V.) Cable Co. v. Mathers (1913), 72 W. Va. 807, 79 S. E. 1079.

Where the stenographer's report of the evidence is endorsed as a correct copy by the counsel for both parties to an action, is signed by the trial judge and is securely attached by paper fasteners to the bill of exceptions, the bill and report are so articulated as to form one paper, and therefore a reference in the bill to the evidence will be construed as applying to the evidence contained in the report.

(Va.) Kecoughton Lodge v. Steiner (1907), 106 Va. 589, 56 S. E. 569, 10 Ann. Cas. 256.

A carbon copy of an official stenographer's transcript of the testimony after having been examined and compared with the original is properly included in the transcript on appeal.

(Md.) Middendorf v. Baltimore Refrig. Co. (1912), 117 Md. 443, 84 Atl. 150.

When the stenographer's report is made a part of the bill of exceptions and there is a conflict between it and the facts alleged in the bill, the report will control.

(Me.) Harmon v. Harmon (1875), 63 Maine 437; Tower v. Haslam (1891), 84 Maine 36, 24 Atl. 587.

(Vt.) Roebling Sons Co. v. B. & M. Tract Co. (1903), 76 Vt. 131, 56 Atl. 530.

Where the stenographer's report or transcript is referred to by the exceptions for certain purposes, it is before the Supreme Court only in those particulars.

(Vt.) Roach v. Caldbeck (1892), 64 Vt. 593, 24 Atl. 989.

Bills of exceptions duly signed by the judge will not be disregarded because the stenographer was not sworn.

(Ind.) Williams v. Turnpike Co. (1881), 76 Ind. 87; Lord v. Bishop (1884), 101 Ind. 334.

(Iowa) Meader v. Allen (1900), 110 Iowa 588, 81 N. W. 799.

Where a volume of manuscript which was evidently a report of the evidence and which contained the formal parts of a bill of exceptions, was signed by the judge within the time allowed, and filed with the clerk as the original bill, the evidence is sufficiently before the court for review.

(Ind.) Breedlove v. Breedlove (1901), 27 Ind. App. 560, 61 N. E. 797.

Acts of 1897, c. 162, declaring the manner in which the evidence shall be taken down and how it shall become a part of the record on appeal, is not limited to shorthand reporters appointed by the court.

(Ind.) Chicago & S. E. Ry. Co. v. McEwen (1904), 35 Ind. App. 251, 71 N. E. 926.

### 7C Preparation of Bill of Exceptions.

Mandamus will lie to compel a judge to sign a bill of exceptions when a correct one is presented in apt time, in cases where the right of appeal exists.

(Ill.) People v. Pearson (1839), 2 Scam. 189; People v. Pearson (1840), 3 Scam. 270; People v. Jameson (1867), 40 Ill. 93; Hullet v. Ames



(1874), 74 Ill. 253; *People v. Williams* (1878), 91 Ill. 87; *People v. Pendergast* (1886), 117 Ill. 588, 6 N. E. 695; *People v. Anthony* (1889), 129 Ill. 218, 21 N. E. 780; *Hawes v. People* (1889), 129 Ill. 123, 21 N. E. 777; *People v. Chytraus* (1899), 183 Ill. 190, 55 N. E. 666; *People v. Holdom* (1901), 193 Ill. 319, 61 N. E. 1014; *State ex rel v. Chetlain* (1905), 219 Ill. 248, 76 N. E. 364.

When, according to the undisputed facts, a correct, complete and accurate bill of exceptions is presented to the judge, he is without discretionary power, and being without discretion, is obliged to act and sign the bill of exceptions.

(Ill.) *State ex rel v. Chetlain* (1905), 219 Ill. 248, 76 N. E. 364.

The trial court cannot refuse a bill of exceptions because it was not prepared by the official reporter, or verified by any such person or official.

(Ill.) *People v. Holdom* (1901), 193 Ill. 319, 61 N. E. 1014; *State ex rel v. Chetlain* (1905), 219 Ill. 248, 76 N. E. 364.

The Act of 1887 does not make it obligatory upon the party preparing a bill of exceptions to use the notes of the official court reporter only, but he may prepare and submit a bill of exceptions containing evidence taken by any competent and reliable reporter whom he chooses to employ.

(Ill.) *State ex rel v. Chetlain* (1905), 219 Ill. 248, 76 N. E. 364.

Under a statute providing that nothing in the act should be construed to prevent parties from preparing statements of fact independently of the transcript of the notes of the official shorthand reporter, mandamus will not lie to compel the reporter to prepare a record for appeal where relator in no way undertook to account for his failure to immediately make up a statement of fact for approval by the judge.

(Tex.) *Young v. Pearman* (1910), 125 S. W. (Tex. Civ. App.) 360.

On application for mandamus, the judge was compelled to settle a statement consistently with exceptions taken at the trial and allowed by the court at the time, and as shown by the stenographer's report.

(Wash.) *In re Rosner* (1893), 5 Wash. 488, 32 Pac. 106.

The trial judge cannot require that the entire transcript of the reporter's minutes be embodied in a statement of facts to which no amendments are proposed, because of his inability to decide upon its accuracy without a complete transcript of the reporter's minutes, since it is a duty devolving upon him to examine the statement and determine from his own judgment whether it contains "all the material facts, matters and proceedings" theretofore occurring in said cause and not a part of the record, and if it does not, to require their insertion.

(Wash.) *State ex rel v. Clifford* (1909), 55 Wash. 440, 104 Pac. 631.

Where neither the proposed case nor the case as settled by the trial justice conforms to the actual occurrences as disclosed by the stenographer's minutes, the record should be amended by inserting a transcript of said minutes.

(N. Y.) *Thomas v. American Molasses Co.* (1913), 158 App. Div. 692, 143 N. Y. S. 813.

A party to an appeal is entitled to have his case show the facts as they really happened at the trial, and should not be prejudiced by an error or omission of the stenographer. Upon the settlement of the case the trial judge must pass upon the accuracy of the record, and the minutes of the stenographer, although entitled to great weight, are not conclusive. The trial judge need not rely upon the stenographer's minutes but may settle the case from his notes and his recollection of what occurred.

(N. Y.) *People v. Buccafurri* (1913), 154 App. Div. 827, 139 N. Y. S. 305; *Weber v. Interborough Rapid Transit Co.* (1915), 152 N. Y. S. 197.

Under Rev. Stat. 1895, Art. 1380, even though an official shorthand report had been made of the trial, if a transcript is not ordered by either party, it is the duty of the trial judge to sign a bill of exceptions presented by either party if correct, the official stenographer act not being the only method of carrying the record into the appellate court.

(Tex.) Middlehurst v. Collins-Gunther Co. (1906), 99 S. W. (Tex. Civ. App.) 1027.

In preparing bills of exceptions parties are not required to resort to the stenographer's copy of the oral evidence, but they may write it out from their notes or from memory as was formerly done.

(Mo.) State ex rel v. Wear (1890), 101 Mo. 414, 14 S. W. 115.

In making up statements or bills of exceptions, litigants are under no obligation to use the transcript of the evidence furnished by the official stenographer; and they may use the notes of any person which furnish a correct narrative of the proceedings.

(Mont.) York v. Steward (1904), 30 Mont. 367, 76 Pac. 756.

Where a trial judge interlines a bill of exceptions and states that he did not think all of the evidence was reported by the stenographer, the court of appeals must accept the facts as certified by the judge, and his statement cannot be discredited by an assignment charging error in changing the testimony of a witness as taken by a sworn stenographer.

(Tex.) Nacogdoches Grocery Co. v. Rushing & Smith (1904), 82 S. W. (Tex. Civ. App.) 659.

While depositions filed with the clerk should be copied in the record he makes for the court of appeal, and should not be embodied in the transcript made by the official stenographer, under Ky. Stat. 4639, which contemplates that the stenographer shall only take notes of and make a transcript of the oral testimony, yet, where the depositions appear in the stenographer's transcript, signed by the judge, or where the bill of exceptions shows that the depositions of named witnesses were read as evidence, and they were copied by the clerk in the record made out by him, or where the stenographer's transcript shows that the depositions of named witnesses were read, and they are copied by the clerk in the record, the depositions will be considered as a part of the record.

(Ky.) Postal Tel. Cable Co. v. Louisville Cotton Oil Co. (1909), 136 Ky. 843, 122 S. W. 852.

A judge cannot be compelled by mandamus to sign a particular bill of exceptions when he alleges in his answer to a rule from the Supreme Court that such bill does not truly state the facts. It is necessary, however, that he should sign a proper bill, which he must certify does contain the facts.

(W. V.) Cummings v. Armstrong (1890), 34 W. Va. 1, 11 S. E. 742.

Under Act of April 3, 1902, p. 566, providing for appeals from the District to the Supreme Court, the judge of the District Court is not required to certify the transcribed stenographic notes of the trial as the state of the case, but is to certify the facts found by him.

(N. J.) Boland v. Kaveny (1904), 71 N. J. Law 488, 58 Atl. 99; Speiser v. North Jersey St. Ry. Co. (1906), 73 N. J. Law 413, 63 Atl. 867.

The statute making the shorthand notes and their extension a bill of exceptions, does not deprive the court of the right to settle and approve a bill of exceptions according to the former practice.

(Iowa) State v. Kehr (1908), 137 Iowa 91, 114 N. W. 542.

It is the duty of the trial judge to examine the bill of exceptions which is submitted to him and determine whether it is correct and accurate. The signing and sealing of a bill of exceptions is a judicial, not merely a min-

isterial act. If the judge cannot remember the evidence he may send for witnesses who testified before him and examine them again, and in this or some other mode determine the facts to be incorporated in the certificate.

(Ill.) State ex rel v. Chetlain (1905), 219 Ill. 248, 76 N. E. 364.

It is no excuse for refusing to settle a statement that appellant had failed to pay for the transcript of evidence of a stenographer employed at the trial, which the judge desired to consult and which was prepared and filed in the cause, but afterwards withdrawn and held by the stenographer as security for his fees, as the court can order its return to the files.

(Wash.) State ex rel v. Allyn (1891), 2 Wash. 470, 27 Pac. 233.

Ky. Stat., 1903, § 1019a, provides for the appointment of an official court stenographer for the courts of continuous session, and article 8 declares that the transcript made by the reporter and filed in the clerk's office may be used in the Court of Appeals as part of the record. *Held*, that where the record was taken and preserved by an official court reporter, it was proper for the court to refuse to sign a bystander's bill of exceptions which was incorrect.

(Ky.) Zehe's Admr. v. City of Louisville (1906), 123 Ky. 621, 96 S. W. 918.

Ky. Stat., § 4639, provides that the transcript may be used in making up a bill of exceptions, and § 4644 declares that a transcript, when attested by the judge before whom the trial was had, may be taken without being copied to the Court of Appeals, to be used on appeal. *Held*, that since § 4644 was only intended to save the cost of copying the transcript, where the transcript is made a part of the bill of exceptions, "the same as if copied therein," and has been approved by the judge presiding when the bill was filed, the statute shall be regarded as having been substantially complied with, and the transcript may be used on appeal without having been copied into the bill of exceptions.

(Ky.) County Board of Education v. Rankin (1911), 142 Ky. 324, 132 S. W. 1026.

A bill of exceptions may not contain any matter in the characters used by shorthand writers, upon the principle that all pleadings must be in the English language. The characters used in stenography cannot be said to be in the English language.

(Ind.) Merrick v. State (1878), 63 Ind. 327.

There is no way by which the speeches of counsel may be legally placed on record, nor can it be seen how the judgment of the court could be reversed by reason of their remarks.

(Pa.) Commonwealth v. Nicely (1889), 130 Pa. 261, 18 Atl. 737.

Where the remarks of counsel were not incorporated in any official report of his speech made by the stenographer, but the statements were taken down at the time by the opposing counsel, and were in the bill of exceptions, certified to by the trial judge, the remarks were properly before the appellate court.

(Ky.) Louisville & Nashville R. R. Co. v. Payne (1910), 138 Ky. 274, 127 S. W. 993.

Where a bill of exceptions does not show any objection to the argument of the prosecuting attorney, or any ruling of the court with reference thereto, or exceptions taken to such ruling, an affidavit by the stenographer who reported the trial showing such facts cannot supply the defects.

(Wyo.) Jenkins v. State (1913), (On rehearing), 22 Wyo. 34, 135 Pac. 749.

A bill of exceptions cannot be amended so as to show the introduction of omitted evidence by an affidavit of an attorney for one of the parties that the evidence was omitted by the reporter by mistake.

(Ky.) *Nicholson Coal Mining Co. v. Moulden* (1911), 143 Ky. 348, 136 S. W. 620.

On an appeal from the county court in a civil case it is proper to bring the original statement of facts filed below to the appellate court instead of copying the statement in the transcript.

(Tex.) *McMullen v. Green* (1912), 149 S. W. (Tex. Civ. App.) 762; *Staley v. Colony Union Gin Co.* (1914), 163 S. W. (Tex. Civ. App.) 381.

The provisions of 31 Leg., p. 374, relative to the incorporation of a statement of facts in the clerk's transcript do not apply to criminal cases in the county court.

(Tex.) *Brogdon v. State* (1911), 63 Tex. Cr. Rep. 475, 140 S. W. 352.

The provisions of Art. 2073 that on an appeal from the district or county court the parties shall have thirty days after adjournment of court in which to prepare and file a statement of facts and bills of exception, by the express provisions of this article, only applies where official shorthand reporters have in fact been appointed.

(Tex.) *Hamilton v. State* (1912), 145 S. W. (Tex. Cr. Rep.) 348.

Bills of exceptions should show only what actually occurred in court, and what the court stenographer told the court as to what happened in the jury room where he was sent by consent of counsel to read testimony to the jury cannot be embodied in the bill of exceptions.

(Mo.) *Quinn v. Metropolitan St. Ry. Co.* (1909), 218 Mo. App. 545, 118 S. W. 46.

The evidence stated in a bill of exceptions need not have been transcribed by the official stenographer.

(Ind.) *Avery v. Nordyke & Marmon Co.* (1904), 34 Ind. App. 541, 70 N. E. 888.

A bill of exceptions cannot be objected to upon the ground that the stenographer was not sworn.

(Ind.) *Williams v. Turnpike Co.* (1881), 76 Ind. 87; *Lord v. Bishop* (1884), 101 Ind. 334.

(Iowa) *Meador v. Allen* (1900), 110 Iowa 588, 81 N. W. 799.

A bill of exceptions cannot be objected to upon the ground that the stenographer was not regularly appointed by the judge.

(Iowa) *Etter v. O'Neil* (1891), 83 Iowa 655, 49 N. W. 1013; *Meador v. Allen* (1900), 110 Iowa 588, 81 N. W. 799.

Where there is no official stenographer in the district, the court may appoint a competent stenographer to keep the record, and if he does so and the record is prepared as required by law, it is sufficient. It is immaterial how the stenographer is appointed.

(Tex.) *Galveston, H. & S. A. R. R. v. Quinn* (1907), 100 Tex. 613, 102 S. W. 723.

It is not the judge's duty to require the court stenographer to read his notes to him in settling a bill of exceptions.

(S. D.) *Myers v. Campbell* (1899), 11 S. D. 433, 78 N. W. 353.

An appellate court will not refuse to consider the evidence because the bill of exceptions does not show that the stenographer was selected or agreed upon by the parties, or that he was sworn to report the case, when the judge certifies that the report sets out all the evidence that was given in the case.

(Ind.) *Garn v. Working* (1892), 5 Ind. App. 14, 31 N. E. 821; *Gaar Scott & Co. v. Wilson* (1898), 21 Ind. App. 91, 51 N. E. 502.

Where an examination of a juror on his voir dire discloses that he was a competent juror, and the record proper shows that he was so accepted by the court and he was not challenged, an entry in the stenographer's notes of the evidence, and copied into the bill of exceptions, directing the juror to "stand aside," will be disregarded as having been inadvertently made.

(Mo.) *State v. Huitz* (1891), 106 Mo. 41, 16 S. W. 940.

When a stenographer is appointed and acts in the trial of a case, it makes no difference by whom the evidence is written out, if the evidence be shown in a bill of exceptions which purports to contain all the evidence.

(Ind.) *Hill v. Hagaman* (1882), 84 Ind. 287.

On an appeal from the court of claims in an equity case under a special act, the evidence must be set out so that the Supreme Court can review the facts and the law as in other cases in equity.

(U. S.) *Harvey v. United States* (1881), 105 U. S. 671, 26 L. Ed. 1206.

Where defendant was delayed in making his case on appeal by the failure of the stenographer to furnish a copy of the minutes, and by negotiations for a settlement, a motion to declare the appeal abandoned for failure to make and serve the case in time should not be sustained, though defendant failed to ask for an extension.

(N. Y.) *Fox v. Fox* (1913), 82 Misc. 394, 143 N. Y. S. 714.

Under Laws of 1913, c. 178, § 6, providing that where no mode is provided by law for the settlement of the record, it shall be settled and certified as the Supreme Court may direct, the trial court must, on the death of the official stenographer, appoint some competent stenographer as the official reporter, who, after qualifying shall prepare from the stenographic notes such transcript as appellant may direct.

(S. D.) *Henry v. Meade County Bank of Sturgis* (1913), 32 S. D. 298, 142 N. W. 1130.

Under Act. No. 136 of 1880, Code Prac. arts. 896-898, held that the defendant's appeal by transcript, omitting plaintiff's testimony, would be dismissed, though plaintiff, because of poverty, was unable to pay for the taking of evidence.

(La.) *Bartlett v. Lee* (1914), 66 So. 390.

That there was no stenographer present when testimony was heard does not deprive parties of the right to insert such evidence in the record.

(S. D.) *Wood v. McCain* (1914), 34 S. D. 544, 149 N. W. 426.

Under Rev. St. 1911, arts. 1924, 2070, a statement of facts prepared from stenographer's notes, no transcript of which had been filed, should be stricken, where the parties have not agreed to a statement as authorized by the article.

(Tex.) *Gulf, C. & S. F. Ry. Co. v. Prazak* (1914), 170 S. W. (Tex. Civ. App.) 859.

Under Acts 32d Leg., c. 119, §§ 5, 6 and 13, where appellant had the official stenographer prepare in narrative form a statement of facts from the shorthand notes, the reporter acted as appellant's agent, and the statement so prepared was a statement of facts, independent of the transcript of the reporter's notes permitted by § 13.

(Tex.) *Canode v. Sewell* (1914), 170 S. W. (Tex. Civ. App.) 271.

#### **7D Bill of Exceptions should be in Condensed Form.**

A bill of exceptions should be in condensed and narrative form.

(Ala.) *Hester v. Cantrell* (1910), 169 Ala. 490, 53 So. 1009; *Turner v. Thornton* (1915), 68 So. 813.

(Mich.) *Andrews v. Lavery* (1909), 159 Mich. 26, 123 N. W. 543.

(Mo.) *McMillen v. Elder* (1911), 155 Mo. App. 662, 135 S. W. 496.

(N. C.) Cressler v. Asheville (1905), 138 N. C. 482, 51 S. E. 53; Bucken v. South & W. R. Co. (1911), 157 N. C. 443, 73 S. E. 187; Locklear v. Savage (1912), 159 N. C. 240, 74 S. E. 347.

(N. D.) O'Keefe v. Beecher (1908), 17 N. D. 404, 117 N. W. 353.

(N. Y.) Pulcino v. Long Island R. R. Co. (1908), 125 App. Div. 629, 109 N. Y. S. 1076.

(Vt.) Josselyn v. Town of Ludlow (1872), 44 Vt. 534.

The stenographer's notes should not be included in the bill of exceptions or statement of facts. The evidence should be set forth in those documents in narrative form.

(Porto Rico) People v. Robles (1906), 10 P. R. 470; Rivera v. Tibot (1906), 11 P. R. 531; Lamboglia v. School Board of Guayama (1907), 13 P. R. 51; People v. Llauger (1908), 14 P. R. 534.

It is improper on appeal, even in equity cases, to print the entire stenographer's minutes without elimination of immaterial testimony, repetitions and arguments.

(Mich.) Tower v. Somerset (1906), 143 Mich. 125, 106 N. W. 874.

It is improper under Rev. 1905, § 591, to submit as a prepared case the stenographer's notes in the form of question and answer, though plaintiff sued in *forma pauperis*.

(N. C.) Skipper v. Kingsdale Lumber Co. (1912), 158 N. C. 322, 74 S. E. 342.

A bill of exceptions should be stricken from the files when it contains a verbatim copy of the stenographer's notes, instead of a narrative thereof.

(Ala.) Gassenheimer Paper Co. v. Marietta Paper Mfg. Co. (1899), 127 Ala. 183, 28 So. 564; Woodward Iron Co. v. Herndon (1900), 130 Ala. 364, 30 So. 370; L. & N. R. R. Co. v. Hall (1901), 131 Ala. 161, 32 So. 603; Birmingham Nat. Bank v. Bradley (1902), 134 Ala. 660, 31 So. 1035.

(Tex.) Murphy & Co. v. Dunman (1909), 55 Tex. Civ. App. 587, 120 S. W. 240.

Before incorporating the notes of the stenographic reporter in a bill of exceptions, all matters should be eliminated which are not necessary to illustrate the point to be presented on appeal. Unless such matters are eliminated it is the duty of the court not only to refuse to settle the bill, but to strike it from the files.

(Cal.) People v. Tetherow (1870), 40 Cal. 286; People v. Padilla (1871), 42 Cal. 535; People v. Getty (1875), 49 Cal. 584; People v. Sprague (1879), 53 Cal. 423; People v. Taing (1879), 53 Cal. 602.

Under § 997 of the Code of Civ. Pro., which provides that the record on appeal must contain so much of the evidence and other proceedings as is material to the question raised, it is proper for the court to strike out the irrelevant matter in the stenographer's notes which is included in the proposed settlement of the case.

(N. Y.) Wierichs v. Innis (1900), 32 Misc. 462, 66 N. Y. S. 553.

A statement of facts consisting of the stenographer's notes in question and answer form in violation of the Acts of 1907, p. 509, was objectionable and might be stricken out on the court's own motion.

(Tex.) Poitevent v. Scarborough (1909), 117 S. W. (Tex. Civ. App.)

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The entire evidence as stenographically taken was sent up as a bill of exceptions, with no index to the record, or to the parts thereof to which the assignments of error applied. It was held that the court in such case will not examine the record critically for error.

(Mich.) Pease v. Monroe (1890), 83 Mich. 475, 47 N. W. 345.

In making up a record on appeal the testimony should be set out in narrative form, but where the exact words are in the opinion of the judge

necessary, he may order such part of the evidence as he believes necessary to be set out by question and answer.

(Minn.) State ex rel v. Otis (1898), 71 Minn. 511, 74 N. W. 283.

Preparation of a bill of exceptions by tacking a heading and conclusion to the usually voluminous notes of a stenographer is oppressive in its expense to the parties, and imposes unnecessary labor on the court.

(Mich.) Rice v. Rice (1883), 50 Mich. 448, 15 N. W. 545.

Where a statement of facts prepared by the stenographer contains a great amount of matter in violation of the rules of the Supreme Court, the cost of such unnecessary matter will be imposed on appellant.

(Tex.) Chaison v. McFaddin (1910), 132 S. W. (Tex. Civ. App.) 524.

The appeal record was a question and answer transcript of the stenographer's notes, and no reason assigned for it. *Held*, that such record could not be considered.

(Mont.) Barger v. Halford (1890), 10 Mont. 57, 24 Pac. 699.

The Massachusetts statute of 1870 providing for the appointment of stenographers in Suffolk county is to afford assistance in making up bills of exceptions, and where 200 pages which "consisted in a large part of irrelevant details of testimony, long cross examinations and interlocutory discussions," were presented; *held*, that the report was so irregular that it must be dismissed.

(Mass.) Churchill v. Palmer (1874), 115 Mass. 310.

By statute in Oregon a bill of exceptions shall not set out more of the evidence or other matter than is necessary to explain the objections. *Held*, that the insertion of the entire transcript of the stenographer's notes in a bill of exceptions which did not set out any objections or exceptions, does not make the transcript a part of the bill.

(Or.) Nosler v. Coos Bay etc. R. & Nav. Co. (1901), 40 Or. 305, 63 Pac. 1050, 64 Pac. 855.

Under Court of Appeals, Rule 10, § 2 (193 Fed. vii., 112 C. C. A. vii), requiring bills of exception to recite the evidence in narrative form, a bill setting out unnecessarily a copy of the stenographer's transcript is improper.

(U. S.) Wheeling Terminal Ry. Co. v. Tussell (1914), 209 Fed. (C. C. A.) 795.

The stenographic report of the testimony, a large portion of which is in questions and answers, and counsel's objections and the rulings of the court, is not such a brief of evidence as is required.

(Ga.) Russell, Admr. v. Hammock (1908), 4 Ga. App. 519, 61 S. E. 1054.

The session laws requiring statements of fact on appeal to be in narrative form apply to all courts, whether they have an official stenographer or not.

(Tex.) Peoples v. Evans (1908), 50 Tex. Civ. App. 225, 111 S. W. 756.

While a stenographer's notes are material for the consultation of the trial judge in making up the case, he may not send them up of his own motion.

(N. C.) Green v. Dunn (1913), 162 N. C. 340, 78 S. E. 211.

The statute making a typewritten transcript of the evidence the record on appeal does not change the Supreme Court rule requiring the transcripts in all cases to conform to certain dimensions.

(Cal.) People v. Phillips (1910), 12 Cal. App. 760, 103 Pac. 731.

A statement of facts containing the evidence in narrative form is sufficient when certified to contain all of the material evidence and testimony introduced upon the trial.

(Wash.) *Delaski v. Nwn. Imp. Co.* (1910), 61 Wash. 255, 112 Pac. 341.

Under Code Pub. Gen. Laws, 1904, art. 5, § 10, it is improper to include the full stenographer's report of the evidence in the bill of exceptions when it is not necessary to enable the Court of Appeals to understand the testimony.

(Md.) *White v. Snyder* (1914), 124 Md. 395, 92 Atl. 763.

#### 7E Party Cannot be Compelled to Incorporate Transcript in Bill of Exceptions.

The notes taken by the stenographer are not a part of the record, and appellant cannot be required to furnish a transcript of such notes to be used in the settlement of the statement of facts.

(Wash.) *State ex rel v. Superior Court* (1896), 13 Wash. 514, 43 Pac. 636.

No transcript of the evidence in a law action is necessary on appeal where the abstract of the appellant purports to present the evidence introduced on the trial, until the appellee denies the correctness of the abstract and points out the particulars in which it is erroneous.

(Iowa.) *Howerton v. Augustine* (1909), 145 Iowa 246, 121 N. W. 373.

Code § 3675 does not change the rule that the bill of exceptions need contain only such matter as will enable the court to pass on the errors assigned.

(Iowa.) *State v. Welsh* (1899), 109 Iowa 19, 77 N. W. 369.

The party desiring to make a bill of exceptions is under obligation to order no more of the testimony from the stenographer than he thinks necessary. If the other party wishes more he must order and pay for it himself.

(Mich.) *Cole v. Ingham Circuit Judge* (1889), 77 Mich. 619, 43 N. W. 995.

Upon a denial by appellee that the evidence was properly preserved, appellant must furnish a transcript from the clerk showing the proper certification and filing of the shorthand notes or a transcript thereof.

(Iowa.) *State v. Owens* (1899), 109 Iowa 143, 80 N. W. 226.

The court cannot require the embodiment in a proposed statement of facts of the entire transcript of the evidence and proceedings as taken by the stenographer at the trial, upon the ground that it can only then know that the statement is a proper one, for the law requires the court to know whether the proposed statement of facts is accurate from its own judgment and memory of the proceedings.

(Wash.) *State ex rel v. Clifford* (1909), 55 Wash. 440, 104 Pac. 631.

No law makes it incumbent upon a defeated party to bring evidence into the record, and where the evidence is not set out on appeal solely on account of the fault of the court stenographer, who did not properly care for his notes, and defendant was unable to obtain the testimony and put it into the bill of exceptions in accordance with the recognized practice, he is not obliged to resort to some discarded practice and trust to the memory of bystanders and the court, and thus make up a bill of exceptions; and if the instructions are erroneous under any state of facts that could have been proven under the issue, the case will be reversed.

(Note: In this case the defendant was under sentence of death, and the official shorthand notes were unintentionally destroyed by being thrown into the fire at the stenographer's home by members of his family, so that



the stenographer was unable to furnish a transcript. The case was reviewed on the instructions of the court and the pleadings, without the facts being before the court. In a very vigorous dissenting opinion, it is said: "When it is recognized that a consideration of all of the proceedings had in the lower court in any manner hearing on the question raised by an instruction, might show that it was without merit, the rule must be that they must be presented here in an appropriate manner before we can say that the error worked prejudice; otherwise a defendant convicted of a crime is permitted to gain an advantage by not bringing up the testimony in the case.")

(Colo.) King v. People (1912), 54 Colo. 122, 129 Pac. 235.

A trial judge has no power to compel a party moving for a new trial to make up the brief of evidence from the official stenographer's report, or to produce the report or a copy of it to be used in verifying the brief.

(Ga.) Central R. R. Co. v. Robinson (1892), 92 Ga. 741, 18 S. E. 986; Bugg v. State (1913), 13 Ga. App. 672, 79 S. E. 748.

There is no requirement of law that a bill of exceptions shall be prepared only by the official stenographer of the trial court, and that none other will be considered. However desirable it may be that the official stenographer shall do this work, there is no imperative requirement that he shall do it; but on the contrary, § 385 of the Code expressly provides for the filing of a bill of exceptions attested and proved as was the bill of exceptions to which objection is urged.

(Colo.) Reynolds v. Campling (1895), 21 Colo. 86, 39 Pac. 1092.

#### 7F Filing of Transcript a Necessary Precedent.

When a stenographer's notes are incorporated in a bill of exceptions by reference, a transcript must be filed before the clerk is required under a then existing statute to prepare the transcript on appeal.

(Iowa) Warbasse v. Card (1887), 74 Iowa 306, 37 N. W. 383; Hammond v. Wolf (1889), 78 Iowa 227, 42 N. W. 778.

Under a former statute the stenographer's notes in an equity case should be certified and filed within six months from the date of the rendering of the judgment.

(Iowa) Merrill v. Bowe (1886), 69 Iowa 653, 29 N. W. 766; Kavaller v. Machula (1889), 77 Iowa 121, 41 N. W. 590; Hammond v. Wolf (1889), 78 Iowa 227, 42 N. W. 778.

Prior to the act of 1897, in order to make a transcript of the evidence a part of the record on appeal, it was necessary to file it in the office of the clerk before being incorporated into the bill of exceptions and signed by a judge.

(Ind.) Garrett v. State (1897), 149 Ind. 264, 49 N. E. 33; Bedford Belt Ry. Co. v. McDonald (1897), 17 Ind. App. 492, 46 N. E. 1022.

It is not essential that the official stenographer's original transcript shall be filed in the clerk's office before it may be incorporated into the bill of exceptions.

(Ind.) B. L. Blair Co. v. Rose (1901), 26 Ind. App. 487, 60 N. E. 10.

The mere fact that the stenographer was too busy to transcribe the evidence, *held* no excuse for failure to file transcript on time.

(Mo.) Stewart v. Davis (1891), 44 Mo. App. 562.

A transcript of the evidence not filed in the circuit court cannot be considered on appeal.

(Ky.) Robertson v. Commonwealth (1912), 148 Ky. 630, 147 S. W. 1.

Original transcript of evidence remains a record of the circuit court, although filed with the clerk of the court of appeals as part of the transcript of record in the case.

(Ky.) Harbison-Walker Co. v. White (1908), 114 S. W. 250.

Under Code 1906, § 797, requiring clerks of the circuit court as soon as the transcribed stenographer's notes are received, to notify each attorney or firm interested in the case, where the clerk failed to notify one of the firms employed by a party, the notes will be stricken out on motion; but formal notice is not necessary where counsel examined the transcript after it was filed.

(Miss.) Scarborough v. Harrison Naval Stores Co. (1909), 95 Miss. 497, 52 So. 143.

A transcript is filed at the term "at which judgment is rendered" when it is filed at the term at which the motion for a new trial is overruled and the judgment becomes final.

(Ariz.) Prescott Nat. Bk. v. Head (1907), 11 Ariz. 213, 90 Pac. 328, 21 Ann. Cas. 990.

Before a transcript of the evidence originally taken in shorthand can be made use of on appeal, it must have been filed within the time designated by statute or rule of court.

(Iowa) Merrill v. Bowe (1886), 69 Iowa 653, 29 N. W. 766; Kavaller v. Machula (1889), 77 Iowa 121, 41 N. W. 590; Hammond v. Wolf (1889), 78 Iowa 227, 42 N. W. 778.

Upon filing notice of intention to prosecute a bill of exceptions, an order was made that the transcript be delivered by the stenographer on or before August 1st, and bill and transcript be filed on or before August 11th in clerk's office. Time for filing of the transcript was extended to October 1st. The bill and transcript were filed on October 8th, and were not acted upon by the trial judge. *Held*, on petition to establish the truth of the exceptions and correctness of transcript, that the time for filing the transcript not having been extended to October 8th, the court could not make such an extension indirectly by establishing the truth of the exceptions, or correctness of transcript.

(R. I.) McLean v. Wheelwright (1910), 31 R. I. 562, 78 Atl. 261.

The provisions of the Code requiring the filing of a transcript of the record in the clerk's office of the court of appeals within sixty days after the judgment cannot be dispensed with, even by agreement of parties.

(Ky.) Berge v. Commonwealth (1914), 158 Ky. 424, 165 S. W. 410; Lane v. Commonwealth (1914), 161 Ky. 329, 170 S. W. 627.

Where the court allowed ninety days for filing the stenographer's notes and then before the expiration of that time allowed twenty days more, and the notes were filed after the expiration of ninety days, *held*, they were filed too late; and an endorsement on the notes to the effect that the moving party's counsel had examined them and found them correct, was not an agreement that the notes could be filed out of time.

(Miss.) Chenault v. Adams Mach. Co. (1910), 97 Miss. 487, 52 So. 189.

The Supreme Court has no jurisdiction to compel a stenographer employed in the trial court to transcribe and file his notes of the evidence within a specified time in aid of the bill of exceptions.

(Miss.) Brooks & Co. v. Gentry (1914), 64 So. 214.

Although not specifically prescribed by § 6169, Gen. St. 1909, it is the duty of appellant to procure a transcript of the shorthand notes, or so much

thereof as may be pertinent to his appeal, and have it made a part of the record before filing his abstract in the Supreme Court.

(Kan.) *Baker v. Readicker* (1911), 84 Kan. 489, 115 Pac. 112.

An appellant who asks a consideration of the evidence on appeal must procure a certified transcript of the notes of the official stenographer.

(Kan.) *Underwood Typewriter Co. v. Anderson* (1911), 85 Kan. 867, 118 Pac. 879.

Where neither a complete transcript of the record nor sufficient abstracts of it could have been filed in the appellate court within the time for perfecting an appeal, because the bill of exceptions could not be obtained from the court stenographer, a sufficient excuse is thereby shown for failure to perfect the appeal in time.

(Mo.) *Wall v. Casualty Co.* (1905), 11 Mo. App. 504, 86 S. W. 491.

Under sub-section 2 of § 337 of the Code, as amended by Act of 1878, the party excepting may at any time during the term at which the judgment becomes final request an extension of time to a day in the succeeding term in which to prepare and file bill of exceptions.

(Ky.) *Carter Coal Co. v. Clouse* (1915), 163 Ky. 337, 173 S. W. 794.

Upon a motion for a new trial upon the minutes of the court, provided by Rev. Codes, § 6795, it is not necessary that the stenographer's notes of the trial proceedings be transcribed, if the court can without them remember the proceedings sufficiently to enable him to decide the motion.

(Mont.) *State ex rel Cohn v. Second Jud. Dist. Ct.* (1909), 38 Mont. 119, 99 Pac. 139.

A transcript of the stenographer's notes, under Rev. Codes, § 4434, as amended by Laws 1911, c. 119, is intended for use as a part of the record on appeal, and is not required to be settled before the motion for a new trial is heard; but the stenographer's notes may be used at the hearing of the motion if necessary.

(Idaho) *Kelley v. Clark* (1912), 21 Idaho 231, 121 Pac. 95.

Transcript or bill of exceptions must be filed within the time prescribed by statute.

(Ky.) *Blue Grass Traction Co. v. Crosdale* (1911), 143 Ky. 196, 136 S. W. 204; *Carter Coal Co. v. Clouse* (1915), 163 Ky. 337, 173 S. W. 794; *Carroll v. Commonwealth* (1915), 164 Ky. 599, 175 S. W. 1043.

Under Laws 1910, c. 111, § 1, pars. A, D, a stenographer's transcript cannot be stricken from the record for delay in filing it or the omission to give appellee an opportunity to examine it, without a showing of material error therein.

(Miss.) *Newman Lumber Co. v. Lucas* (1915), 67 So. 451.

Under Rev. St. 1911, arts. 1924, 2070, a statement of facts prepared from the stenographer's notes, no transcript of which had been filed, should be stricken, where the parties have not agreed to a statement as authorized by the article.

(Tex.) *Gulf, C. & S. F. Ry. Co. v. Prazak*, 170 S. W. (Tex. Civ. App.) 859.

## 8—CERTIFICATES.

- A Necessity for Certificate.
- B Sufficiency of Certification.
- C Time for Certifying.

### 8A Necessity for Certificate.

Before a transcript of the evidence originally taken in shorthand can be made use of on appeal, it must be certified to as correct.

(Ky.) McAllister v. Conn. Mutual Life Ins. Co. (1879), 78 Ky. 531; Forrest v. Crenshaw (1883), 4 Ky. Law Rep. 596, 81 Ky. 51; McKeever v. Kennedy (1897), 19 Ky. Law Rep. 845, 42 S. W. 114; Chesapeake & Ohio Co. v. Smith (1897), 101 Ky. 707, 42 S. W. 538.

(Ind.) Shirk v. Coyle (1891), 2 Ind. App. 354, 27 N. E. 638.

(Iowa) Richards v. Lounsbury (1885), 65 Iowa 587, 22 N. W. 687; Merrill v. Bowe (1886), 69 Iowa 653, 29 N. W. 766; DeLong v. Lee (1887), 73 Iowa 53, 34 N. W. 613; Harrison v. Snair (1889), 76 Iowa 558, 41 N. W. 41; Kavalier v. Machula (1889), 77 Iowa 121, 41 N. W. 590; Hammond v. Wolf (1889), 78 Iowa 227, 42 N. W. 778.

(N. M.) Territory v. Christman (1899), 9 N. Mex. 582, 58 Pac. 343.

The transcript for appeal must be attested by the trial judge, as provided in § 4644, or it will not be considered on appeal.

(Ky.) Mann v. Moore (1902), 23 Ky. Law Rep. 2121, 112 Ky. 725, 66 S. W. 723; Southern Ry. Co. v. Thurman (1903), 25 Ky. Law Rep. 804, 76 S. W. 499; Ill. Cent. R. Co. v. Howard (1905), 27 Ky. Law Rep. 513, 85 S. W. 732; Knecht v. Louisville Tel. Co. (1905), 28 Ky. Law Rep. 456, 121 Ky. 492, 89 S. W. 508; Carter Coal Co. v. Clouse (1915), 163 Ky. 337, 173 S. W. 794.

A transcript of evidence which is not properly certified cannot be considered.

(Ky.) Robertson v. Commonwealth (1912), 148 Ky. 630, 147 S. W. 1.

Act of April 12, 1905, providing that the stenographer's report of a trial may be certified by the judge of that court as the state of the case on appeal, does not authorize the attorneys to certify such a state of the case.

(N. J.) Speiser v. North Jersey St. Ry. Co. (1906), 73 N. J. Law 413, 63 Atl. 867.

P. L. 1905, p. 259, requiring the certification of a transcript where a stenographer is appointed, establishes the only method of bringing appealable rulings of the district court before the appellate court, but does not supersede P. L. 1902, p. 365, as to rulings outside of the scope of the stenographer's transcript.

(N. J.) Hauser v. Squire (1911), 81 N. J. Law 287, 81 Atl. 263.

It is essential to the validity of the record that the stenographer's notes of evidence, exceptions, and the charge when filed of record, should be certified to as correct by the signature of the judge. The judge may so declare either by formal bills with his seal, or he may adopt the notes of the stenographer as a verity, and so declare by his certificate at the end of the stenographic report, certifying to its correctness as a whole.

(Pa.) Commonwealth ex rel v. Arnold (1894), 161 Pa. 320, 29 Atl. 270; Kerns v. Prudential Ins. Co. (1899), 11 Pa. Super. Ct. 209; Yoast v. Beatty (1899), 12 Pa. Super. Ct. 219; Rothschilds Sons Co. v. McLaughlin (1900), 12 Pa. Super. Ct. 612; Levy v. Slinger Mfg. Co. (1906), 32 Pa. Super. Ct. 117; American Car & F. Co. v. Altoona etc. Ry. Co. (1907), 218 Pa. 519, 67 Atl. 838; Farley v. Altoona etc. Ry. Co. (1907), 32 Pa. Super. Ct. 413; Thompson v. Petriello (1907), 33 Pa. Super. Ct. 651.

It must affirmatively appear of record, by the certificate of the trial judge, that the record made up by the stenographer, including the evidence and the charge, is true, and filed of record at his direction.

(Pa.) Philadelphia v. West Philadelphia Institute (1896), 177 Pa. 37, 33 Atl. 1012; Yoast v. Beatty (1899), 12 Pa. Super. Ct. 219; Glenn v. Strickland (1902), 21 Pa. Super. Ct. 88.

The stenographer's minutes of the testimony will be stricken out if not incorporated in a statement of facts, and it is not sufficient to recite that they are part of the statement, without any certificate or proof that it is all the evidence.

(Wash.) Case v. Ham (1894), 9 Wash. 54, 36 Pac. 1050.

The certificate of a judge who cannot read the shorthand notes does not give them the character of evidence, and when a period of six months is allowed for the certification by the judge, a transcript properly certified must be filed within that time.

(Iowa) Richards v. Lounesbury (1885), 65 Iowa 587, 22 N. W. 687; Hammond v. Wolf (1889), 78 Iowa 227, 42 N. W. 778.

Where the notes of testimony in an equity case have not been certified by either the official stenographer or the trial judge, the appeal may be quashed.

(Pa.) Thomas v. Borden (1908), 222 Pa. 184, 70 Atl. 1051.

The certificate of a stenographer to a transcript of evidence cannot be permitted to impeach the certificate of the judge, even if it tended to show a contrary state of facts. The lower court may require the stenographer's certificate, but it adds nothing to its verity on appeal.

(Ky.) Carter Coal Co. v. Clouse (1915), 163 Ky. 337, 173 S. W. 794.

Bill of exceptions purporting to make a part of the record all testimony, etc., held worthless, where testimony was identified by neither the stenographer, clerk nor judge.

(U. S.) Brown v. Cumberland Tel. & T. Co. (1915), 221 Fed. (C. C. A.) (La.) 261.

A purported bill of exceptions containing the evidence, certified to by the reporter, but not signed by the trial judge and not showing that it was ever filed with the clerk of the trial court, cannot be considered.

(Ind.) Indianapolis Outfitting Co. v. Brooks (1915), 108 N. E. (Ind. App.) 867.

## 8B Sufficiency of Certification.

The official stenographer is often the only person who can read his notes, and he therefore should certify to the accuracy of the transcript.

(Iowa) Richards v. Lounesbury (1885), 65 Iowa 587, 22 N. W. 687.

(Pa.) Heyer v. Cunningham Piano Co. (1897), 6 Pa. Super. Ct. 504.

The person who actually takes the stenographic notes must certify them, and it is not enough if they are certified to by a deputy or in the firm name of the firm of which the stenographer is a member.

(Pa.) Rosenthal v. Ehrlicher (1893), 154 Pa. 396, 26 Atl. 435; Woodward v. Heist (1896), 180 Pa. 161, 36 Atl. 645; Heyer v. Cunningham Piano Co. (1897), 6 Pa. Super. Ct. 504.

The court will not take judicial notice of the fact that if the system of shorthand used by two reporters is the same the notes of one may be read by the other, and the latter can properly translate and certify to the translation of the notes made by the former. Therefore, when notes are taken by an assistant reporter, a transcript certified by the official reporter is not sufficient.

(Iowa) Spinney v. Halliday (1902), 115 Iowa 420, 88 N. W. 939.

While it is a well known fact that the stenographic notes taken by one stenographer cannot always be read and transcribed by another, yet,

nevertheless, where stenographers use the same system of shorthand, the notes taken by one may be read by another familiar with that system. The stenographer who took the notes died before the same were transcribed, and they were transcribed by another stenographer who used the same system. *Held*, in the absence of proof that the transcription was not correct, a transcript certified by the reporter who transcribed the notes should be accepted as a true and correct translation of the notes taken on the trial.

(P. I.) *United States v. Choa Tong* (1912), 22 Philippine 562.

When the evidence on the trial in the lower court was taken, a part by the official stenographer, and the rest by another stenographer acting for him, each of the stenographers was the "official stenographer" *pro hac vice*.

(Miss.) *Lumber Mineral Co. v. King* (1910), 98 Miss. 733, 54 So. 250.

Where one official reporter reported the first part of the trial and another the latter part, and there was an agreement by counsel that one reporter should certify the entire record as though he were the sole reporter, and this was done, and each reporter transcribed the notes taken by him and certified to the same, the record was properly preserved.

(Iowa) *Hofacre v. Monticello* (1905), 128 Iowa 239, 103 N. W. 488.

An official stenographer's certificate as to the accuracy of the transcript is a sufficient certificate.

(Cal.) *People v. Morine* (1882), 61 Cal. 367.

(Iowa) *Ross v. Loomis* (1884), 64 Iowa 432, 20 N. W. 749.

The stenographer's certificate should state that the proceedings, evidence and charge were fully and accurately taken on the trial, and that the transcript is a correct translation of such notes.

(Pa.) *Heyer v. Cunningham Piano Co.* (1897), 6 Pa. Super. Ct. 504.

Where there is no statement of facts or bill of exceptions, but reliance is had on the reporter's transcript, great care should be exercised to have it properly authenticated by the trial judge. Under Rev. St., § 614, a reporter's transcript simply marked "Approved" by the trial judge was not a sufficient compliance with the statute.

(Ariz.) *Reinlger v. Besley* (1914), 16 Ariz. 161, 141 Pac. 574.

A certificate by the stenographer that "the foregoing is a full, true and correct transcript of the testimony and other proceedings had on the trial of the foregoing case," shows that the bill of exceptions contained all the evidence, and is sufficient.

(Utah) *Mitchell v. Jensen* (1905), 29 Utah 346, 81 Pac. 165.

The bill of exceptions was a transcript of the official stenographer's notes, with a certificate by him that it contained a full transcript of all the evidence. *Held*, that though the court in the certificate of the statement did not expressly state that it contained all of the evidence, yet it necessarily by implication certified to the truth of the statement by the stenographer that it contained all the evidence.

(Utah) *Bowman v. Ogden* (1908), 33 Utah 196, 93 Pac. 561.

If the certificate that "the above and foregoing is a full, true and correct transcript of all the proceedings therein" is not a technical compliance with § 4670 requiring the statement to be certified "as being a correct statement of such testimony and proceedings in the case," and is not satisfactory, the defect is merely formal and may be amended on the trial.

(Utah) *State v. Vance* (1910), 38 Utah 1, 110 Pac. 434.

Prior to 1907 an uncertified transcript of the reporter's notes, while not serving as a bill of exceptions, was sufficient to serve as a statement of the evidence.

(Ariz.) *Leatherwood v. Richardson* (1908), 11 Ariz. 278, 94 Pac. 110.

A certificate to a transcript of a preliminary examination reading, "I hereby certify the foregoing to be a correct transcript of the examination in the above entitled case" held sufficient under Penal Code, § 869.

(Cal.) *People v. Riley* (1888), 75 Cal. 98, 16 Pac. 544.

Where the shorthand notes were duly certified by the trial judge but on making the transcript the reporter detached the certificate from the notes and attached it to the transcript, although unauthorized, such detachment does not affect the validity of the notes, and the original attached to the transcript will be treated as a copy.

(Iowa) *Steele Smith Co. v. Potthast* (1899), 109 Iowa 413, 80 N. W. 517.

The certificate of a stenographer to a transcript of the evidence prepared under Laws of 1905, § 534, is not ineffectual and the transcript is not invalid, because such certificate does not immediately follow the recital of the evidence in the record.

(Kan.) *Hardy v. Curry* (1907), 75 Kan. 92, 89 Pac. 19.

Photographs properly certified by the official stenographer, in the absence of any suggestion that they are not true exhibits, will not be stricken out because not certified by the Circuit Court Clerk with the transcript.

(Ky.) *Southern Ry. Co. v. Schmidt* (1909), 118 S. W. 324.

Where a shorthand report was made of a trial, under § 3675, and the notes are properly certified by the judge and reporter, a certificate to the transcript that "the within and foregoing is a full, true and complete extension of the official report" is sufficient.

(Iowa) *Fordyce v. Humphrey* (1911), 152 Iowa 76, 131 N. W. 686.

The contention that a bill of exceptions is not properly authenticated when there is only the certificate of the stenographer that it contained all the testimony and proceedings, is not good, and the objection to such bill of exceptions cannot be considered.

(Utah) *State v. Delvecchio* (1902), 25 Utah 18, 69 Pac. 58.

Upon overruling a motion for a new trial on the ground that the verdict is contrary to the evidence, the usual and better practice is for the evidence to be set out in the bill of exceptions before the signature of the judge is attached; but it is not fatal error if the certificate of the judge precedes the evidence where the evidence is completely identified, and is, in effect, made a part of the bill of exceptions.

(Va.) *Jeremy Improvement Co. v. Commonwealth of Virginia* (1907), 106 Va. 482, 56 S. E. 224.

A shorthand reporter is an officer of the court and the filing and translation of his notes are official acts, and where they are duly certified and filed they are presumed to be correct. Therefore, held where a decree recited that all the evidence was taken down in shorthand by the reporter, and was ordered filed and made a part of the record, the record was properly preserved, and that a transcript duly certified by the reporter was not required to be certified by the judge.

(Iowa) *Burnett v. Loughridge* (1893), 87 Iowa 324, 54 N. W. 238.

A transcript must be certified to by the reporter. (This is held to be dictum in *Smith v. State*, 42 Neb. 356, 60 N. W. 585.)

(Neb.) *Spellman v. Flynn* (1886), 19 Neb. 342, 27 N. W. 224.

Under former statutes, *held* that before a reporter's notes can become a part of a bill of exceptions, they must be certified to by the reporter and the judge, and a certified transcript filed within the time prescribed for filing a bill of exceptions. (But now see Code § 3652 as amended.)

(Iowa) *Gibbs v. Buckingham* (1878), 48 Iowa 98; *McCarthy v. Watrous* (1886), 69 Iowa 260, 28 N. W. 602; *Merrill v. Bowe* (1886), 69 Iowa 653, 29 N. W. 766; *Ferris v. Anderson* (1887), 72 Iowa 420, 34 N. W. 186; *Arts v. Culbertson* (1887), 73 Iowa 13, 34 N. W. 490; *Wadsworth v. Nat. Bank* (1887), 73 Iowa 425, 35 N. W. 504; *Harrison v. Snair* (1889), 76 Iowa 558, 41 N. W. 41.

The shorthand report provided for by Code § 3675 is a substitute for the ordinary bill of exceptions, but either a formal bill of exceptions or the shorthand report properly certified must be filed within thirty days after the final determination of the case, or within a reasonable time thereafter to be fixed by the court, not to exceed ninety days.

(Iowa) *In re Tobey's estate* (1900), 112 Iowa 581, 84 N. W. 666.

Under Code §§ 3675 and 3749, the reporter's notes certified by himself and the trial judge, and filed in the office of the clerk within thirty days from the date of the judgment from which appeal is taken, constitute a bill of exceptions and make the reported evidence a part of the record. The certificate is not required to be made at once, in court or by the court, but by the judge and the reporter.

(Iowa) *Hamill v. Schlitz Brewing Co.* (1913), 165 Iowa 266, 143 N. W. 99.

The precise language of the statute need not be followed in the certificate to the shorthand notes to constitute them the bill of exceptions.

(Iowa) *State v. Welsh* (1899), 109 Iowa 19, 77 N. W. 369.

Where a party to a trial has filed with the clerk of the trial court a transcript of the evidence certified by the official stenographer, the stenographer's certificate is sufficient to authenticate the transcript in the first instance. If it is subsequently settled by the judge on objections thereto, his certificate is sufficient to authenticate it as a full, true and complete transcript.

(Kan.) *Bliss v. Brown* (1908), 78 Kan. 467, 96 Pac. 945.

Where it was sought, under Rem. & Bal. Code, § 1247, to introduce testimony given on a former trial, the testimony which had been certified by the trial judge, for use on appeal, need not be re-certified for use on a subsequent trial.

(Wash.) *Knutson v. Moe Bros.* (1913), 72 Wash. 290, 130 Pac. 347.

Under Rev. Codes, § 7576, as amended by Laws 1909, p. 146, where the evidence at a preliminary examination is taken by a stenographer, his certificate takes the place of the certificate of the magistrate as to the correctness of the evidence.

(Idaho) *State v. Carlson* (1913), 23 Idaho 545, 130 Pac. 463.

A mere certificate by the judge to the reporter's notes, set up outside of the bill of exceptions, is insufficient.

(Wis.) *Semmens v. Walters* (1882), 55 Wis. 682, 13 N. W. 889.

A stenographer's certificate as to the accuracy of the transcript is not a sufficient certification.

(Ind.) *McCormick Harvesting Mach. Co. v. Gray* (1887), 114 Ind. 340, 16 N. E. 787; *L'Hommedieu v. C. W. & M. R. R. Co.* (1889), 120 Ind. 435, 22 N. E. 125; *Clark v. State* (1890), 125 Ind. 1, 24 N. E. 744; *Fiscus v. Turner* (1890), 125 Ind. 46, 24 N. E. 662; *State v. Bercaw* (1892), 132 Ind. 260, 31 N. E. 798.

(Pa.) *Commonwealth ex rel v. Arnold* (1894), 161 Pa. 320, 29 Atl. 270.



Code § 3675 provides that the reporter shall note in his report in shorthand or in writing the fact that the jury were instructed, together with all exceptions and objections to instructions given by the court on its own motion. *Held*, that neither such section nor any other provision of the code authorized the preservation of the record of such exceptions by the mere certificate of the judge and reporter that they were taken, but the record itself must show this.

(Iowa) *Black v. Miller* (1912), 158 Iowa 293, 138 N. W. 535.

The appellate court will not consider assignments of errors which require a consideration of the evidence, unless the stenographer's notes are properly certified and made a part of the record, and a certificate of a judge that "the report of the charge of the court and answers to plaintiff's points is substantially correct," is insufficient.

(Pa.) *Rothschilds Sons Co. v. McLaughlin* (1900), 12 Pa. Super. Ct. 612.

A stenographer's certificate of a transcript of evidence in a criminal case, that it is a full and accurate transcript of the shorthand notes of the oral evidence produced upon the trial, does not show that the transcript contains all the evidence, where there are indications that record evidence was admitted.

(Ky.) *Commonwealth v. Campbell* (1906), 28 Ky. Law Rep. 1354, 91 S. W. 1128.

The certificate of the stenographer certifying that the evidence contained in the case made is a correct and complete transcript of all his shorthand notes of all the evidence introduced or offered on the trial is not sufficient, but the case made must contain the positive averment by way of recital that it contains all the evidence submitted or introduced on the trial of the case.

(Okla.) *Wagner v. Sattley Mfg. Co.* (1909), 23 Okla. 52, 99 Pac. 643.

Under Code Civ. Proc., § 941a, etc., as amended by Laws of 1907, p. 753, a certificate by the shorthand reporter is not sufficient; the court or judge being empowered to make such a record authentic.

(Cal.) *Lane v. Tanner* (1909), 156 Cal. 135, 103 Pac. 846.

A statement of facts not certified by the trial judge, but simply authenticated by the affidavit of the stenographer who reported the case, will be struck out on motion.

(Wash.) *Adams v. Columbia Canal Co.* (1908), 51 Wash. 297, 98 Pac. 741.

A shorthand report of the trial was not properly certified where the certificate thereto was also written in shorthand.

(Iowa) *Howerton v. Augustine* (1911), 153 Iowa 17, 132 N. W. 814; *In re Skillman's estate* (1912), 134 N. W. 1064; *Wiggins v. Swayze* (1913), 139 N. W. 1075.

A certificate as to the accuracy of the shorthand notes made by a judge alone, who cannot read them, is insufficient.

(Iowa) *Richards v. Lounesbury* (1885), 65 Iowa 587, 22 N. W. 687; *Merrill v. Bowe* (1886), 69 Iowa 653, 29 N. W. 766.

The stenographer's certificate that the bill of exceptions contains all the evidence received upon the trial is of no value for the purposes of certification.

(Colo.) *Pelton v. Bauer* (1894), 4 Colo. App. 335, 35 Pac. 918.

In the absence of a statute allowing it, a stenographer cannot certify that the transcript contains all the evidence.

(Ind.) *Stout v. Stout* (1881), 77 Ind. 537; *Marshall v. State* (1886),

107 Ind. 173, 6 N. E. 142; *Wagoner v. Wilson* (1886), 108 Ind. 210, 8 N. E. 925; *Lyon v. Davis* (1887), 111 Ind. 384, 12 N. E. 714.

(Pa.) *Rosenthal v. Ehrlicher* (1893), 154 Pa. 396, 26 Atl. 435; *Connell v. O'Neil* (1893), 154 Pa. 582, 26 Atl. 607; *Commonwealth ex rel v. Arnold* (1894), 161 Pa. 320, 29 Atl. 270.

A mere statement of the stenographer without the sanction and signature of the judge who presided at the trial is not a formal and proper certificate of the proceedings and findings had upon the trial.

(S. C.) *Rynerson v. Allison* (1888), 30 S. C. 534, 9 S. E. 656.

Where the shorthand notes upon their return to the clerk's office after a transcript was made by the reporter had only a blank certificate attached, but the reporter's transcript set out a purported copy of a duly signed certificate, and the reporter on the hearing of a motion to correct the record testified that the notes when originally filed had a proper certificate attached, it will not be assumed that the reporter is unworthy of confidence. *Held*, under the evidence, that the record should be corrected to show the notes properly certified.

(Iowa) *First Nat. Bank v. Eichmeler* (1911), 153 Iowa 154, 133 N. W. 454.

The certificate of the reporter only to his transcript is required as to the correctness thereof upon appeal, when the trial is had before the court. Only in cases where the trial is had before a referee is the certificate of the judge required.

(Or.) *Tallmadge v. Hooper* (1900), 37 Or. 503, 61 Pac. 349; *Sanborn v. Fitzpatrick* (1907), 51 Or. 457, 91 Pac. 540.

Under Laws 1907, c. 57, § 24, where causes are tried without a jury, the certificate of the official reporter is not alone sufficient to make the transcript of the testimony an element in review of the case. Such transcript must in addition be properly certified as correct by the trial judge.

(N. M.) *Street v. Smith* (1909), 15 N. M. 95, 103 Pac. 644; *Oliver Typewriter Co. v. Burtner* (1912), 17 N. Mex. 354, 128 Pac. 62.

The certificate upon a reporter's transcript of notes taken by him at an examination of a prosecuting witness before the committing magistrate, must state that the transcript is a correct statement of the testimony and proceedings, and not merely that it is a full, true and correct transcript of the shorthand notes. The certificate must be correctly written, and its absence cannot be supplied by parol evidence so as to make the transcript admissible.

(Cal.) *People v. Carty* (1888), 77 Cal. 213, 19 Pac. 490.

The act of 1873 does not create the office of official shorthand reporter whose oath of office covers his reports of all cases, and a transcript of evidence certified by one styling himself "official shorthand reporter" is insufficient, unless the record shows his authority to report the evidence in the particular case.

(Ind.) *Luckenbill v. Kreig* (1899), 153 Ind. 479, 55 N. E. 259.

When testimony is given in a foreign language, and taken down stenographically, a transcript thereof cannot be proven by the stenographer who took the evidence, but the interpreter should be called to prove the transcript.

(Cal.) *People v. Ah Yut* (1880), 56 Cal. 119.

A certificate "that the foregoing is a true and correct transcript of the evidence taken by me in shorthand in the case" without giving the title, is not sufficient to identify the testimony as being that taken on a hearing

of a motion to correct the record, especially where there is nothing to show that the testimony was filed and made a part of the record.

(Ark.) *Murphy v. Citizens Bank* (1907), 84 Ark. 100, 104 S. W. 187.

Under Stats. 1903, §§ 4639, 4641 and 4644, *held*, that an original bill of exceptions filed in the circuit court by an order of that court could not be brought to the Court of Appeals, where it had not been attested by the circuit judge, and where it did not appear that the evidence was taken in shorthand.

(Ky.) *Blackburn v. Hanlon* (1906), 29 Ky. Law Rep. 1290, 97 S. W. 352.

The mere statement in a certificate of the reporter that "it contains all the testimony and oral proceedings" *held* not to be sufficient, the word "testimony" implying only sworn testimony, and not synonymous with the word "evidence."

(Utah) *Carter v. Cummings* (1908), 34 Utah 315, 97 Pac. 334.

"Testimony" is not a proper word to be employed in a certificate to a bill of exceptions that it contains all the evidence, to warrant an assignment of error that the evidence is insufficient to support the decision.

(Utah) *Crooks v. Harmon* (1905), 29 Utah 304, 81 Pac. 93.

Under Comp. Laws 1907, §§ 4670, 4685x1, transcript of testimony on preliminary examination for homicide, transcribed by stenographer in type-writing, testified by stenographer at trial to be correct, was not inadmissible because certificate stated transcript was in longhand when it was typewritten.

(Utah) *State v. Hillstrom* (1915), 150 Pac. 935.

### 8C Time for Certifying.

Under a statute requiring that the evidence in an equity case shall be certified within six months, a transcript should be certified within that time, as the transcript alone constitutes the written evidence.

(Iowa) *Merrill v. Bowe* (1886), 69 Iowa 653, 29 N. W. 766; *Hammond v. Wolf* (1889), 78 Iowa 227, 42 N. W. 778.

Under Ky. Stats., § 4644, transcripts of testimony made by the official stenographer in civil cases, when attested by the trial judge, may be taken to the Court of Appeals, and be used upon appeal without being copied. *Held*, that where a circuit judge made an order for filing a bill of exceptions, but inadvertently failed to sign it, he might sign it after it had been filed in the Court of Appeals.

(Ky.) *Blackburn v. Hanlon* (1906), 29 Ky. Law Rep. 1290, 97 S. W. 352.

Under Ky. Stats., § 4644, a stenographer's transcript not attested by the judge will be stricken from the record on appeal, though there was an order by the trial court reciting that it was approved and signed, made a part of the record, and ordered to be transmitted to the clerk of the Court of Appeals without copying; but the appellee may withdraw such transcript for the purpose of having it properly attested, if it can be done, and then refile it as part of the record.

(Ky.) *Mann v. Moore* (1902), 23 Ky. Law Rep. 2121, 112 Ky. 725, 66 S. W. 723.

If it is necessary for the stenographer to certify the transcript at all, it was not necessary to do so on the day it was tendered. It is evident that the stenographer certified the transcript while it was in the hands of the court.

(Ky.) *Carter Coal Co. v. Clouse* (1915), 163 Ky. 337, 173 S. W. 794.

It is highly improper for the stenographer and the trial judge to sign the certificate to the transcript of the evidence before the transcript itself has been prepared.

(Ky.) *Fuson v. Commonwealth* (1915), 162 Ky. 341, 172 S. W. 646.

9—NOTES AS EVIDENCE.

- A When admissible.
- B Inadmissibility.
- C Reading of Notes.
- D Receivable only upon showing impossibility of procuring attendance of witness.
- E Admissible though stenographer has no independent recollection.
- F Evidence to contradict notes admissible.
- G Notes as best evidence.
- H Receivable as depositions.
- I Effect of erroneous admission.

9A When Admissible.

An official stenographer's notes are admissible upon a subsequent trial when made so by statute.

(Cal.) *Reid v. Reid* (1887), 73 Cal. 206, 14 Pac. 781.

(Ill.) *Phares v. Barber* (1871), 61 Ill. 271.

When allowed by statute, notes taken on a former trial may be read upon a subsequent trial of the same action.

(Ill.) *Chicago & Alton R. Co. v. Robinson* (1884), 16 Ill. App. 229.

(Ind.) *Sage v. State* (1890), 127 Ind. 15, 26 N. E. 667; *Bass v. State* (1893), 136 Ind. 165, 36 N. E. 124.

(Iowa) *State v. Smith* (1896), 99 Iowa 26, 68 N. W. 428.

(Kan.) *Wright v. Wright* (1897), 58 Kan. 525, 50 Pac. 444.

(Maine) *State v. Frederic* (1879), 69 Maine 400; *Noyes v. Gilman* (1880), 71 Maine 394.

(Mich.) *Stewart v. Port Huron First Nat. Bk.* (1880), 43 Mich. 257, 5 N. W. 302; *Labar v. Crane* (1885), 56 Mich. 585, 23 N. W. 323; *Pickard v. Bryant* (1892), 92 Mich. 430, 52 N. W. 788.

(N. Y.) *Lawson v. Jones* (1881), 1 Civ. Pro. (N. Y.) 247, 61 How. Pr. 424.

(S. D.) *Merchants Nat. Bank v. Stebbins* (1898), 10 S. D. 466, 74 N. W. 199.

(U. S.) *Chicago, St. P. M. & O. Ry. Co. v. Myers* (1897), 25 C. C. A. 486, 80 Fed. 361.

(Vt.) *Quinn v. Halbert* (1885), 57 Vt. 178.

(Wash.) *Klepsch v. Donald* (1894), 8 Wash. 162, 35 Pac. 621.

The requirement of § 4670 that the transcript be filed within ten days with the clerk is merely directory, and in the absence of any showing that the defendant was thereby prejudiced, it is proper to allow the same to be read and used on the trial.

(Utah) *State v. Vance* (1910), 38 Utah 1, 110 Pac. 434.

It was proper in a manslaughter trial to allow the court reporter who took stenographic notes of the accused's testimony at a former trial to state part of such testimony, where he testified to the accuracy of his report.

(Tex.) *Cornelius v. State* (1908), 54 Tex. Cr. Rep. 173, 112 S. W. 1050.

A transcript of evidence is admissible only in the cases authorized by statute (§ 245-a, Code Supp. 1913)—a retrial, or when offered for the purpose of impeachment.

(Iowa) *Walker v. Walker* (1902), 117 Iowa 609, 91 N. W. 908; *In re Wiltsey's will* (1904), 122 Iowa 423, 98 N. W. 294, and (1907), 135 Iowa 430, 109 N. W. 776.

A transcript of the evidence may be used on a subsequent trial of a case to impeach the testimony of witnesses whose evidence on a former trial is contained therein.

(Iowa) *Hibbard v. Zenor* (1891), 82 Iowa 505, 49 N. W. 63.

A transcript of notes taken at a former trial may be used to show admissions, or for impeachment purposes.

(Iowa) Rudd v. Dewey (1908), 139 Iowa 528, 116 N. W. 1062.

A transcript of the testimony taken in proceedings supplemental to execution is admissible as an admission.

(Iowa) Coldren Land Co. v. Royal (1908), 140 Iowa 381, 118 N. W. 426.

The transcript of the testimony of a party on a former trial may be introduced as admissions as against interest, even though no foundation has been laid for offering it for impeachment purposes.

(Iowa) Lush v. Town of Parkersburg (1905), 127 Iowa 701, 104 N. W. 336.

Proof of defendant's testimony on a former trial does not deprive him of his statutory right to refrain from being a witness on his retrial if he so elects, but such evidence is competent as a statement or declaration against interest.

(Iowa) State v. Kimes (1911), 152 Iowa 240, 132 N. W. 180.

On the retrial of a criminal case, a transcript of the testimony of a witness on the first trial who is beyond the jurisdiction of the court may be read without violating the constitutional right of the defendant to be confronted with the witnesses against him.

(Iowa) State v. Kimes (1911), 152 Iowa 240, 132 N. W. 180; State v. Brown (1911), 152 Iowa 427, 132 N. W. 682; State v. Conklin (1911), 153 Iowa 216, 133 N. W. 119.

Testimony taken upon a former trial is not hearsay, and may be admitted when proven, to impeach a witness.

(Ga.) Pound v. State (1871), 43 Ga. 88.

Where the stenographer who took the testimony of a witness at a former trial testified to the accuracy of his notes, the court properly permitted him to read from his notes for the purpose of impeaching the witness.

(Tex.) Casey v. State (1906), 50 Tex. Cr. Rep. 392, 97 S. W. 496.

In a prosecution for perjury committed in a civil case, it was proper to allow the official stenographer to read in evidence a transcript of his original stenographic notes of the testimony of the accused, where it was shown that he was experienced and capable, and that the original notes had been lost.

(Tex.) Barber v. State (1912), 64 Tex. Cr. Rep. 96, 142 S. W. 577.

An official court stenographer who took the notes of a witness before the grand jury, may as impeaching such witness, read his notes in evidence to the jury, if he remembers and can testify that at the time they were correctly taken, and that the notes contain all the evidence of the witness on the question at variance, although at the time he is called to testify he has no independent recollection of the testimony.

(Ohio) Baum v. State (1904), 27 Ohio C. C. 569.

Where witnesses have denied making certain statements at a former trial, testimony of the stenographer that they made the statements ascribed to them is competent in rebuttal, and its weight is for the jury.

(Wash.) State v. Fetterly (1903), 33 Wash. 599, 74 Pac. 810.

One's testimony at an inquest being admissible under Rev. Codes, § 8025, only to impeach him by showing that he had there made statements at variance with his testimony at the trial, not all of it, but only such part of it as tends to contradict his testimony at the trial is admissible.

(Mont.) Westlake v. Keating Gold Min. Co. (1914), 48 Mont. 120, 136 Pac. 38.

The testimony of a party to an action given on a former trial may be introduced against him on the second trial, though he is present in court and may be called as a witness.

(Colo.) Buddee v. Spangler (1888), 12 Colo. 216, 20 Pac. 760.

It was proper to permit plaintiff's counsel to read the testimony of a witness given at a former trial, where the testimony had been read to the witness and he had stated that he did not do the acts stated in the testimony and did not remember having so testified.

(R. I.) Carr v. Am. Locomotive Co. (1908), 29 R. I. 276, 70 Atl. 196.

The fact that a witness gave contrary testimony on a former trial may be shown by a witness who heard the testimony on the former trial, though it may also be shown by stenographic notes or bill of exceptions.

(Ind.) Dotterer v. State (1909), 172 Ind. 357, 88 N. E. 689.

Where, in the trial for an alleged felony, a witness is called by the state who has testified about the same facts at the preliminary examination, and the defense produces and offers in evidence a transcript of the court stenographer's notes taken at the preliminary examination, claiming a material variance, such transcript should usually be admitted in evidence.

(Kan.) State v. Berger (1912), 87 Kan. 479, 124 Pac. 400.

A shorthand report of the testimony of defendant as a witness before the grand jury was properly admitted in evidence at the trial for the purpose of impeaching defendant, where the stenographer who took down the evidence testified, before reading the same, that it was a true and complete report thereof, although he testified that he had no independent recollection of defendant's testimony independent of the shorthand copy thereof.

(Ind.) Higgins v. State (1901), 157 Ind. 57, 60 N. E. 685.

In a civil action for assault and battery, it was not error to admit evidence of a witness taken in shorthand on the trial of the defendant for assault with intent to commit great bodily injury on plaintiff, involving the same assault, in which such witness was fully cross-examined, where the proper foundation was laid, and the reporter who took the notes testified at the civil trial as to what the witness said in the criminal trial.

(Iowa) Kreuger v. Sylvester (1897), 100 Iowa 647, 69 N. W. 1059.

The admissions made by the accused while testifying on the trial of a civil case may be proved by the court stenographer, and for such purpose he may refer to and read from a transcript of his notes after laying a proper foundation by showing that they were correctly taken and transcribed.

(N. D.) State v. Longstreth (1909), 19 N. D. 268, 121 N. W. 1114.

Where on the trial of a will a witness for contestants had testified that the testator in giving his evidence in a certain action was incoherent, and on cross-examination said he had the stenographer's notes of his evidence in the action, that the stenographer was not sworn but the witness said the notes were substantially correct, and on motion the proponents to contradict were permitted to read the notes to the jury, *held*, no error.

(W. Va.) Kerr v. Lunsford (1888), 31 W. Va. 659, 8 S. E. 493, 2 L. R. A. 668.

The official stenographic reporter of the court who had taken down the evidence at the trial in a criminal case was put upon the stand in a civil cause for malicious prosecution and allowed to testify as to the evidence given by a witness at the criminal trial, but beyond the jurisdiction of the court at the trial of the civil case. He read from his official notes.

The objection that the plaintiff might have taken the deposition of the witness or produced him was not well taken. For the purpose of showing want of probable cause, the reporter was as competent to testify as the witness, and if the witness had been in the court room it is highly probable that his memory as to the evidence given at the trial would not have been so accurate as the official report of it.

(Colo.) *Brown v. Willoughby* (1879), 5 Colo. 1.

The stenographer's minutes of the testimony of a saloon keeper on a prosecution for drunkenness of one to whom he had sold liquor, are admissible in an action under the civil damage act against the saloonist by the wife of the person convicted.

(Mich.) *Lucker v. Liske* (1897), 111 Mich. 683, 70 N. W. 421.

A stenographer's transcript of his shorthand notes taken at the coroner's inquest is properly admitted in a murder trial as original; though, if it be desired to impeach the correctness of the transcript, comparison may be had with the original notes.

(Ala.) *Godau v. State* (1913), 179 Ala. 27, 60 So. 908.

In any case where a stenographer's report is admissible in evidence, a duly certified copy thereof may be received.

(Neb.) *Spellman v. Flynn* (1886), 19 Neb. 342, 27 N. W. 224.

When it appears that the original transcript has been lost, and that a witness who testified on a former trial is too infirm to be present and testify, a carbon copy of the original transcript may be read in evidence, if identified by the official stenographer as a true carbon copy.

(Pa.) *Molloy v. U. S. Ex. Co.* (1902), 22 Pa. Super. Ct. 173.

Although the stenographer writes out in words the signs made by a dumb witness, yet his notes are admissible under a statute allowing stenographic notes to be admitted in evidence.

(Vt.) *Quinn v. Halbert* (1885), 57 Vt. 178.

Although a stenographer's transcript which is introduced in evidence concerns the testimony of a witness who has subsequently made a deposition, yet the transcript may be admitted in evidence.

(Mich.) *Labar v. Crane* (1885), 56 Mich. 585, 23 N. W. 323.

Where a witness was beyond the jurisdiction, it was proper to permit plaintiff to read in evidence his testimony given at a former trial.

(Mich.) *Dolph v. Lake S. & C. Ry. Co.* (1907), 149 Mich. 278, 112 N. W. 981; *Croze v. St. Mary's & C. Co.* (1908), 153 Mich. 363, 117 N. W. 81.

Where the evidence of a witness in a case was taken down and preserved by the court stenographer, and the witness afterwards removed from the state, such evidence was admissible in a subsequent trial of the same case between the same parties, though no diligence was exercised to procure the deposition of such witness.

(Colo.) *Rico R. & M. Co. v. Musgrave* (1890), 14 Colo. 79, 23 Pac. 458; *Emerson v. Burnett* (1898), 11 Colo. App. 86, 52 Pac. 752.

A transcript of evidence taken on a former trial is competent to show what witnesses testified to on that trial, when they are not within the jurisdiction of the court on the subsequent trial, and the official reporter who reported the case has certified that said transcript is full, true and correct.

(Ala.) *Ala. Western R. R. Co. v. Downey* (1912), 177 Ala. 612, 58 So. 918.

The state may introduce in evidence stenographic notes of the testimony of a witness given at a former trial, where such witness is without the state and not available.

(Colo.) *Henwood v. People* (1914), 57 Colo. 544, 143 Pac. 373.

Where a witness is absent from the state, his testimony, given at a former trial of the same cause between the same parties is admissible, if otherwise unobjectionable.

(Neb.) *Jerich v. Union Pac. R. Co.* (1915), 97 Neb. 767, 151 N. W. 310.

In a prosecution for manslaughter, where the sheriff showed due diligence to serve process on a witness, and that the witness could not be found within the state, testimony of such witness on a former trial was admissible.

(Cal.) *People v. Wilson* (1915), 146 Pac. (Cal. App.) 1048.

Under Laws 1909, c. 5897, the exclusive method for procuring the testimony given by an absent witness on a former trial is to introduce the original bill of exceptions containing the witness' testimony, or, if lost, to re-establish such bill of exceptions.

(Fla.) *Johnson v. State* (1914), 68 Fla. 528, 67 So. 100.

Admission of evidence given by one defendant on a former trial against him, held not violative of his privilege against self-incrimination.

(Minn.) *State v. Newman* (1914), 127 Minn. 445, 149 N. W. 945.

Transcript of only part of defendants' testimony before coroner's jury held admissible in evidence to contradict their testimony at the trial.

(Ala.) *Patterson v. State* (1915), 67 So. 997.

Record of testimony given by plaintiff and her sister on the trial of another action held admissible to discredit their testimony that at the time of the injury plaintiff was in good health.

(Pa.) *Gallagher v. Phila. Rapid Transit Co.* (1915), 248 Pa. 304, 93 Atl. 1074.

Gen. St. 1909, § 2407, permitting the use of the stenographer's transcript in testimony does not restrict such use to the limitations attaching to a deposition under §§ 5931 and 5953. (Code Civ. Proc. §§ 337, 358.)

(Kan.) *New v. Smith* (1915), 94 Kan. 6, 145 Pac. 880.

The stenographer who took the evidence of a witness at a preliminary examination testified that he transcribed a portion of the notes and dictated a portion to a typewriter operator; that he compared the transcript with his original notes and that the same was correct, and that all the typewriting done by persons other than himself was done under his dictation and in his presence. *Held*, that the transcript was admissible in evidence on the trial, the witness being out of the state.

(Cal.) *People v. Garnett* (1908), 9 Cal. App. 194, 98 Pac. 247.

Upon a motion for a new trial, a transcript may be used if the stenographer testified that the witnesses were sworn and that the copy of the evidence is correct.

(Ill.) *Brown v. Luehrs* (1875), 79 Ill. 575.

To render a stenographer's transcript admissible, it must appear that he certified thereto within a reasonable time after the testimony was given.

(Cal.) *Reid v. Reid* (1887), 73 Cal. 206, 14 Pac. 781.

Before a stenographer's notes can be admitted in evidence at a subsequent trial, they must be properly authenticated by the stenographer's certificate, or otherwise, and the mere fact that the person who made them was an official stenographer does not raise the presumption that they were accurate and therefore obviate the necessity for the authentication.

(Mich.) *Misner v. Darling* (1880), 44 Mich. 438, 7 N. W. 77.

Stenographic notes of testimony at a former trial of a witness not in attendance at a subsequent trial were admissible where proved to be



substantially the testimony of the absent witness by a witness who was present at the former trial and heard the testimony.

(Tex.) *Smith v. State* (1912), 148 S. W. (Tex. Cr. R.) 722.

The court did not err in permitting the stenographer to reproduce testimony of a former trial as transcribed by him, where the stenographer testified that it was a correct transcript.

(Tex.) *Pace v. State* (1913), 69 Tex. Cr. Rep. 27, 153 S. W. 132.

In a proceeding to punish the bankrupt for contempt in giving evasive answers, the accuracy of the notes being proved by the stenographer who made them, no further proof was required.

(U. S.) *In re Kaplan Bros.* (1914), 213 Fed. (C. C. A.) 753.

The state, on the second trial, may not introduce the stenographic report of the testimony of a witness on a former trial by merely showing his absence at the second trial, but must first show the correctness of the testimony as taken by the stenographer.

(Tex.) *Franklin v. State* (1911), 62 Tex. Cr. Rep. 433, 138 S. W. 112;  
*Eads v. State* (1914), 170 S. W. (Tex. Cr. Rep.) 145.

Where an official reporter correctly reported testimony on a former trial, and accurately transcribed it into the bill of exceptions, which had been settled and allowed under a stipulation, and it was admitted that the witnesses were then non-resident of the county and absent therefrom, and it was shown that a party was without means to secure the depositions of such witnesses or their attendance at court, it was not error to permit the testimony of such absent witnesses to be read from the bill of exceptions.

(Neb.) *Soucek v. Karr* (1909), 83 Neb. 649, 120 N. W. 210.

The testimony of a witness on a former trial can be read only to refresh the memory of such witness, or to contradict him.

(N. Y.) *Dambmann v. Metropolitan St. Ry. Co.* (1907), 55 Misc. 60, 106 N. Y. S. 221.

Before a stenographer's notes taken before a coroner or committing magistrate can be admitted in evidence at a subsequent trial to impeach a witness, it must be shown that they were read to, approved and signed by such witness.

(Neb.) *Lipscomb v. Lyon* (1886), 19 Neb. 511, 27 N. W. 731.

The stenographer who took the incriminating answers of accused on an examination, swore that a transcript of his minutes had been compared with the original stenographic notes, and that it was correct; that in taking the notes the questions and answers were correctly taken, and that while he could remember some of the questions and answers in part, he could not remember them in full without referring to the notes, but no demand that he testify to the particular questions and answers remembered was made. *Held*, that the transcript of his notes made and certified in accordance with the practice in civil cases under Code Civil Pro., §§ 83 and 84, was competent evidence.

(N. Y.) *People v. Randazzio* (1909), 194 N. Y. 147, 87 N. E. 112.

In order to render admissible upon a subsequent trial the notes made by a stenographer upon a preliminary hearing, his notes must be transcribed into longhand and certified to as correct.

(Cal.) *People v. Carty* (1888), 77 Cal. 213, 19 Pac. 490.

Where the testimony at an investigation before a prosecuting attorney was taken down and correctly transcribed and produced in court at a subsequent trial by the public stenographer, by whom it was taken and who is

a witness at the trial, he may be permitted to read from the transcript when asked what the witness had testified.

(Del.) *State v. Rash* (1910), 25 Del. (2 Boyce) 77, 78 Atl. 405.

Where the testimony given at a previous trial had been taken down in shorthand by the official court stenographer, by whom it is produced when he is called as a witness for the state in a subsequent trial, and he has testified that the transcript is a true and correct copy of the testimony given, he may be permitted to read therefrom.

(Del.) *State v. Rash* (1910), 25 Del. (2 Boyce) 77, 78 Atl. 405.

One who heard the testimony of a witness at an examining trial and who took down the testimony is, on the death of the witness, authorized to swear to the accuracy of the statement after identifying the paper on which the testimony was taken down, regardless of certificate; but where the only means of identification of the testimony is a certificate, the certificate must be shown.

(Tex.) *Dowd v. State* (1908), 52 Tex. Cr. Rep. 563, 108 S. W. 389.

A stenographer's transcript of evidence is admissible when he testified that he took the testimony in shorthand, and that the transcript is correct and contains all the testimony received.

(U. S.) *In re Cary* (1881), 9 Fed. 754.

The testimony of a witness taken at the examining trial before the county judge by an official reporter, and afterwards transcribed, may be read on the subsequent trial, the witness being then deceased, where the reporter testified that the witness had been sworn, and that the testimony was correctly taken down and transcribed, even though the record of the county court did not show there had been an examining trial or the appointment of such stenographer for the occasion.

(Ky.) *Moore v. Commonwealth* (1911), 143 Ky. 405, 136 S. W. 608.

Under Comp. L., 1909, § 6623, a transcript of the testimony of a witness at the examining trial is admissible on the witness' death without further verification or identification; but where the provisions of said section were not complied with, such transcript is not admissible unless the stenographer testified that a purported copy was a true and correct copy of his notes.

(Okla.) *Wadsworth v. State* (1913), 9 Okla. Cr. App. 84, 130 Pac. 808.

Stenographic notes of testimony taken down at the coroner's inquest and afterwards written out in ordinary characters may, upon due proof that the writing is a correct minute of what the witness testified, be read to show contradictions between that testimony and the testimony of the witness on the stand, his attention being first called to the same.

(Ga.) *Cox v. State* (1879), 64 Ga. 374, 37 Am. Rep. 76.

A transcript of a witness' testimony in a former trial of the case being part of a duly certified copy of the report of the trial which, by statute, is made admissible as evidence in all cases where the subject matter would be admissible under the rules of evidence, may be used to refresh the recollection of the witness in the subsequent trial, in the discretion of the trial court.

(Vt.) *Mahoney's Admr. v. Rutland R. Co.* (1908), 81 Vt. 210, 69 Atl. 652.

If the court permitted a stenographic report of testimony taken at a previous trial to be read in evidence, a transcript thereof should be deemed to be in evidence, with the privilege to the opposite party of examining it and cross-examining upon it.

(Ohio) *Hutchinson v. State* (1906), 28 Ohio C. C. 595.

When a party has testified on a former trial and his evidence is made incompetent through the death of the other party before a second trial, the testimony of such party can be read by the stenographer who took it down, although it is not in the form of a deposition subscribed to by the party.

(N. Y.) *Lawson v. Jones* (1881), 1 Civ. Pro. (N. Y.) 247, 61 How. Pr. 424.

The testimony of a witness at a former trial, who has since died, given before a court having jurisdiction of the parties and power to administer oaths, but not having jurisdiction of the subject matter, may be introduced in evidence at a subsequent trial.

(Colo.) *Jerome v. Bohm* (1895), 21 Colo. 322, 40 Pac. 570.

§ 4643 of the Ky. statutes providing that the testimony of any witness taken by the official stenographer in any court may be used in a subsequent trial between the same parties where the testimony of such witness cannot be procured, does not apply to a witness who is dead, but applies only to the testimony of living witnesses whose presence cannot be procured at a subsequent trial.

(Ky.) *Fuqua v. Commonwealth* (1905), 26 Ky. Law Rep. 420, 81 S. W. 923.

Where a witness testified on the trial of a criminal case and died before another trial, his evidence taken down by the official stenographer in phonetic characters and transcribed into ordinary characters was admissible at the second trial, where it was shown that the notes were correctly taken, and that the written evidence tendered was a correct transcript of such notes.

(Ga.) *Jones v. State* (1907), 128 Ga. 23, 57 S. E. 313.

The transcript of the testimony of a deceased witness who testified at a former trial is admissible, on the official stenographer testifying that the testimony was taken down accurately and correctly transcribed.

(Ky.) *Austin v. Commonwealth* (1906), 30 Ky. Law Rep. 295, 98 S. W. 295.

Testimony taken on a preliminary hearing and supported by the stenographer's evidence is admissible on the trial, where the witness giving the same is dead.

(Okla.) *Stealer v. State* (1914), 10 Okla. Cr. App. 460, 138 Pac. 395.

The testimony of witnesses at a former trial, who were dead or absent from the state at the present trial, may be read to the jury.

(Ky.) *Yocum's Admx. v. C. N. O. & T. P. Ry. Co.* (1911), 143 Ky. 700, 137 S. W. 217.

Testimony of a witness in a criminal case may be proved on a subsequent trial, where it is shown that the witness is dead or insane, or is beyond the jurisdiction of the state.

(Ala.) *Brown v. State* (1914), 11 Ala. App. 321, 66 So. 829.

Under Comp. Laws 1907, §§ 4670, 4685x1, transcript of testimony of physician on preliminary examination for homicide held admissible, the witness being out of the state and due diligence to subpoena him having been shown.

(Utah) *State v. Hillstrom* (1915), 150 Pac. 935.

On second trial of a case, the testimony of a witness on the first, since deceased, is admissible on behalf of either party, when properly proved.

(Tex.) *Texas & N. O. R. Co. v. Williams* (1915), 178 S. W. (Tex. Civ. App.) 701.

In a prosecution for homicide, testimony of dead witness at former trial, admissible if witness were living, held admissible.

(Tex.) *Sweat v. State* (1915), 178 S. W. (Tex. Cr. Rep.) 554.

On the retrial of a case, the original plaintiff being deceased, his testimony given on the first trial may be read in evidence.

(Iowa) Flint v. Atlas Mut. Ins. Co. (1909), 142 Iowa 431, 120 N. W. 1031.

Decedent, for injury to whom his administrator sues, having testified on a former trial, it was proper to read his testimony from the official stenographer's notes.

(Tex.) Waggoner v. Sneed (1911), 138 S. W. (Tex. Civ. App.) 219.

Where, in an action to recover damages for personal injuries, plaintiff's judgment was reversed upon appeal; and after remand of the case, plaintiff died, and the action was, by consent, revived in the name of the administrator, such stipulation concedes the death of the original plaintiff and dispenses with the necessity of the affidavit required by § 4643, Ky. Stats., to render admissible the testimony of plaintiff's intestate taken upon the former trial by the official stenographer. The benefit of former testimony of an intestate extends to his personal representative.

(Ky.) Ky. Trac. & Term. Co. v. Downing's Admr. (1914), 159 Ky. 502, 167 S. W. 683.

While at common law the substance of the testimony of a deceased witness was admissible on a subsequent trial, the exact words can under the system of stenographic reporting be reproduced, and Rev. St., ch. 84, § 162, makes a certified copy of the stenographer's notes admissible.

(Me.) Edgeley v. Appleyard (1913), 110 Maine 337, 86 Atl. 244.

Where a witness at a former trial had since died, the reporter's notes of his testimony given at such trial, though not signed by the witness, were admissible to prove his testimony.

(Ala.) Jones v. State (1911), 174 Ala. 85, 57 So. 36.

A transcript of the evidence of a deceased witness who testified at an examining trial of accused is admissible on the proof by the stenographer that it was taken down correctly and accurately transcribed.

(Ky.) Quinlan v. Commonwealth (1912), 149 Ky. 476, 149 S. W. 892.

Where a party who testified at the first trial died before the second trial, the stenographic report of the testimony, accompanied by the testimony of the stenographer that the report was a correct transcript of the notes taken by him, was admissible.

(Tex.) Wiener v. Zweib (1910), 128 S. W. (Tex. Civ. App.) 699.

The evidence given by a deceased witness is competent where the issues in the former trial were substantially the same as those in which the testimony was offered.

(Ill.) Levine v. Carroll (1905), 121 Ill. App. 105.

Testimony given in a prior suit involving the present issue is admissible, the witness being dead.

(Ala.) Coulson v. Scott (1910), 167 Ala. 606, 52 So. 436.

Where plaintiff testified before an auditor, and died, a stenographic transcript of his testimony was admissible at a subsequent trial of the same action.

(Mass.) Randall v. Peerless Motor Car Co. (1912), 212 Mass. 352, 99 N. E. 221.

Under the law of 1893 notes of the evidence of a deceased witness taken at a former trial may be read.

(S. D.) Merchants Nat. Bk. v. Stebbins (1898), 10 S. D. 466, 74 N. W. 199.

It is competent for a party, on the second trial of an action in the federal court, under the general rule, to prove the testimony given on the former trial by a witness who has since died, there being no federal statute on the subject.

(U. S.) *Nome Beach &c. Co. v. Standard Marine Ins. Co.* (1907), 156 Fed. (C. C.—Cal.) 484.

In a prosecution for rape, the official stenographer was properly permitted to read to the jury the transcript of the testimony of the prosecutrix given at the examining trial, where the prosecutrix had since died.

(Ky.) *Lake v. Commonwealth* (1907), 31 Ky. Law Rep. 1231, 104 S. W. 1002.

A transcript of an official stenographer duly filed in a former trial is admissible in evidence upon a subsequent trial, although the filing in the former case was not authorized by the judge.

(Vt.) *Bridgman v. Corey's Est.* (1890), 62 Vt. 1, 20 Atl. 273.

When a witness who has given evidence on a former action between the same parties, where the same issue is involved, is out of the jurisdiction of the court, such testimony is admissible upon a subsequent trial.

See cases cited in 11 A. & E. Enc. of Law, page 523, note 2.

In case of a first and second trial, there being a bill of exceptions made a part of the record containing the evidence on the former trial, and sufficient ground being shown on the latter trial for reproducing the evidence of any witness, it may be done by reading from such bill, and if it is not certified to contain all the evidence, the rest thereof may be shown by any competent proof, such as a certified transcript of the stenographer's minutes.

(Wis.) *Howard v. Beldenville Lbr. Co.* (1908), 134 Wis. 644, 114 N. W. 1114.

Where one party offers part of the evidence of a witness given on a former trial to contradict such witness, the other party may put in so much as is relevant, and may cause the stenographer to read his original minutes.

(Me.) *Noyes v. Gilman* (1880), 71 Maine 394.

Under a statute providing that certified copies of all papers belonging to any public office or by authority of law filed to be kept therein, a certified copy of the stenographer's transcript of the proceedings in the District Court is admissible, where the original would be under an act which provides for the appointment of an official stenographer, and which further provides that he shall keep an office and preserve his stenographic report, which shall be the property of the state.

(Neb.) *Spellman v. Flynn* (1886), 19 Neb. 342, 27 N. W. 224.

When depositions are taken in shorthand, under statutory provisions the notes may be signed by the witness after being read over to him, and it is not necessary that the witness sign or swear to the translation of the notes.

(Iowa) *Slocum v. Brown* (1898), 105 Iowa 209, 74 N. W. 936.

In a prosecution for statutory rape, where accused had been acquitted in a former prosecution, when the state relied on a different act, evidence in the former trial, tending to show that the accused was guilty of the act charged in the second prosecution, was admissible.

(Tex.) *Hamilton v. State* (1914), 168 S. W. (Tex. Cr. Rep.) 536.

Under L. O. L., §§ 727, 1533, and Const., art. 1, § 11, testimony of witnesses out of the state, given in a former trial for larceny, is admissible, so far as relevant, against the same defendant in a prosecution for polygamy.

(Or.) *State v. Von Klein* (1914), 71 Or. 159, 142 Pac. 549.

**9B Inadmissibility.**

In the absence of a statute the notes of a stenographer are inadmissible upon a subsequent trial

(Cal.) Reid v. Reid (1887), 73 Cal. 206, 14 Pac. 781.

The testimony of an official stenographer, refreshed by his notes taken at a former trial, as to the testimony of an absent witness, is regarded as hearsay and is inadmissible in the absence of a statute declaring the legal value of such notes, in a case where it does not affirmatively appear that by the exercise of due diligence the testimony of such absent witness could not have been taken by deposition.

(N. M.) Kirchner v. Laughlin (1890), 5 N. M. 365, 28 Pac. 505.

The stenographer's notes are only admissible in the case of an absent witness, and cannot be allowed to impeach a present witness.

(Ohio) Penn. Co. v. Trainer (1896), 12 Ohio C. C. 66.

In a criminal case the shorthand notes of an absent witness taken on a former trial are inadmissible against the defendant.

(Tex.) Smith v. State (1905), 48 Tex. Cr. Rep. 65, 85 S. W. 1153.

Under laws of 1909, c. 5897, it was error to permit the official stenographer to read the testimony of two absent witnesses as given at a former trial.

(Fla.) Coley v. State (1914), 67 Fla. 178, 64 So. 751.

A stenographer's transcript of evidence on a former trial cannot be used to contradict the witness on a subsequent trial, the legislature not having declared such reports evidence for any purpose.

(Ill.) Phares v. Barber (1871), 61 Ill. 271.

The official stenographer's notes of the testimony of a party upon a former trial cannot be read in evidence, especially when the party is alive and present in court, but on laying the proper foundation, such former testimony can be proved by the stenographer or any other person that heard it.

(Mo.) Byrd v. Hartman (1897), 70 Mo. App. 57; Dempsey v. Lawson (1898), 76 Mo. App. 522.

A stenographer's notes taken at a former trial are inadmissible to impeach the testimony of a witness on the second trial regarding matters alleged to have been testified to by him at such former trial.

(Wash.) State v. Freidrich (1892), 4 Wash. 204, 29 Pac. 1055; Redford v. Spokane St. R. Co. (1896), 15 Wash. 419, 46 Pac. 650.

One's testimony at an inquest being admissible under Rev. Codes, § 8025, only to impeach him by showing that he had there made statements at variance with his testimony at the trial, not all of it, but only such part of it as tends to contradict his testimony at the trial is admissible.

(Mont.) Westlake v. Keating Gold Min. Co. (1914), 48 Mont. 120, 136 Pac. 38.

When the law does not provide for the certification by the shorthand reporter of the proceedings of a district court, a transcript of his notes, although certified to, is not admissible as independent evidence in a second trial.

(Neb.) Jordan v. Howe (1903), 4 Neb. (Unoff.) 667, 95 N. W. 853.

Unless the transcript has been compared with the stenographer's notes, a transcript made by a person other than the stenographer who took the testimony is not admissible in evidence.

(Mich.) People v. McKinney (1882), 49 Mich. 334, 13 N. W. 619.

The court stenographer's notes of the evidence of a witness at a former trial could not be admitted in evidence unless transcribed so that they could be read and shown to be correct.

(Tex.) *Harris v. State* (1913), 71 Tex. Cr. Rep. 463, 160 S. W. 447.

An official stenographer's notes are not admissible as evidence in a subsequent action in which the parties are not the same as in the action in which the notes were taken.

(Ill.) *Sebree v. Bd. of Education* (1912), 254 Ill. 438, 98 N. E. 931.

(Mich.) *Besley Light & P. Co. v. Commonwealth Power Co.* (1912), 172 Mich. 78, 137 N. W. 668.

(N. Y.) *Lyon v. Brown* (1898), 31 App. Div. 67, 52 N. Y. S. 531.

A copy of testimony shown by a report of the Interstate Commerce Commission to have been given by a witness in an investigation before that body, not otherwise authenticated, is not competent evidence in a subsequent suit in the federal court between different parties and in which different issues are involved.

(U. S.) *United States v. Reading Co.* (1910), 183 Fed. (C. C.) 427.

A transcript of testimony can only be used in a re-trial of the case in which it was taken, so that evidence taken on the contest of a will cannot be used in the subsequent contest of a different will.

(Iowa) *Spiers v. Hendershott* (1909), 142 Iowa 446, 120 N. W. 62.

The admission as to what an absent witness would testify to, received to avoid a continuance, may not be offered on a subsequent trial except to avoid a continuance thereof, notwithstanding Code Supp. 1907, § 245a, making the reporter's notes of evidence admissible in evidence.

(Iowa) *Neidy v. Littlejohn* (1910), 146 Iowa 355, 125 N. W. 198.

The testimony of witnesses at a preliminary hearing was not reduced to writing, but was taken in stenographic notes by a stenographer employed by one of the parties. It did not appear that the stenographer was an officer of the law. The stenographic notes were not transcribed and read over and subscribed by the witnesses during the preliminary trial. At some time after the trial the notes were transcribed, and at a different place in the absence of the defendant taken by the magistrate and read over to the witnesses testifying, who subscribed their names as such. The stenographer was not examined as to the correctness of his notes or his transcribing. *Held*, not to establish a proper foundation for the admission of such secondary testimony.

(Ala.) *Degg v. State* (1907), 150 Ala. 3, 43 So. 484.

Where the stenographer stated that he could not say that his notes contained all that the witness stated at a coroner's inquest, such notes could not be used for impeachment purposes.

(Or.) *State v. Martin* (1906), 47 Or. 282, 83 Pac. 849.

The testimony of a witness given at a trial in a county court cannot be proved by the notes of the county court reporter upon the trial of the cause on appeal to the district court, unless the parties so stipulate.

(Colo.) *Cerrusite Mineral Co. v. Steele* (1902), 13 Colo. App. 216, 70 Pac. 1091.

A stenographer's transcript of testimony given by witnesses at a former trial who have since died is not admissible in the absence of any evidence that the evidence was correctly transcribed, other than the certificate of the stenographer.

(Colo.) *Williams v. Sleepy Hollow Min. Co.* (1906), 37 Colo. 62, 86 Pac. 337, 7 L. R. A. (N. S.) 1170.

A part of the stenographic notes was read in evidence by the defendant, and he then called a witness to testify as to other statements made at

the former trial. The prosecution was then allowed against objection to read the portion of the stenographic notes bearing upon the statement testified to. *Held*, erroneous.

(Cal.) *People v. Morine* (1882), 61 Cal. 367.

Evidence given at a former trial could not be proved by reading to a witness from an alleged transcript what purported to be extracts from the testimony given on the occasion named by the named witnesses and asking him whether as a fact the testimony was given as purported to have been from the transcript so used.

(Md.) *Packham v. Ludwig* (1906), 103 Md. 416, 63 Atl. 1048.

A transcript of the evidence of a party relating to personal transaction with the adverse party, since deceased, is not a deposition within the meaning of Code § 4605, and cannot be used as such in a subsequent trial of the action.

(Iowa) *Greenlee v. Mosnat* (1907), 136 Iowa 639, 111 N. W. 996.

Under the provisions of Art. 772 of Code of Civ. Pro., 1895, allowing the reading of depositions upon proof that a witness is dead or out of the state, the shorthand notes of the testimony of a witness taken upon a former trial are inadmissible.

(Tex.) *Smith v. State* (1905), 48 Tex. Cr. Rep. 65, 85 S. W. 1153.

The notes of an official stenographer, though accompanied by a formal certificate, are not admissible in evidence as independent evidence, when the law makes no provision for the certification by the stenographer of the proceedings of the District Court.

(Neb.) *Smith v. State* (1894), 42 Neb. 356, 60 N. W. 585.

Under the act of 52nd Congress, 1 sess., c. 14, which provides that depositions may be taken in the manner allowed by law in the state in which the federal court is held, the stenographic transcript of notes taken on a former trial, though such notes are admissible in evidence under the law of the state where the court is held, are not admissible in the federal court.

(U. S.) *Mulcahey v. Lake Erie & W. R. R. Co.* (1895), 69 Fed. (C. C.) 172.

A deposition taken before a proper notary and taken down in shorthand and typewritten by a clerk of plaintiff's attorneys should be suppressed, since such clerk was not a "disinterested person" within the meaning of the statute.

(Ind.) *Knickerbocker Ice Co. v. Gray* (1904), 165 Ind. 140, 72 N. E. 869.

When a stenographer's notes are incomplete they cannot be introduced to contradict a witness.

(Ky.) *Beavers v. Bowen* (1904), 26 Ky. Law Rep. 291, 80 S. W. 1165.

An unverified transcript of defendant's testimony taken at a former trial by a stenographer appointed by the court was inadmissible on a subsequent trial.

(Tex.) *St. L. S. W. Ry. Co. v. Rea* (1904), 84 S. W. (Tex. Civ. App.) 428.

It is improper to admit in evidence a transcript of the official stenographer's notes of a witness' testimony taken at a former trial, where it is not signed by him or otherwise certified by him to be correct.

(Tex.) *Prewitt v. S. W. Tel. & Tel. Co.* (1907), 46 Tex. Civ. App. 123, 101 S. W. 812.

Testimony of a stenographer as to what a witness had testified to on another trial is properly excluded, in the absence of a showing that the



testimony of such witness was correctly taken by the stenographer or the minutes correctly transcribed.

(N. Y.) *People v. Hoke* (1912), 27 N. Y. Cr. R. 483, 151 App. Div. 744, 136 N. Y. S. 235.

(Tex.) *Eads v. State* (1914), 170 S. W. (Tex. Cr. Rep.) 145.

The testimony of a witness on the stand inconsistent with his testimony given upon a former trial cannot be shown by the case on appeal, but only by a transcript of the minutes of the stenographer, supported by his oath upon the stand.

(N. Y.) *Trenkman v. Schneider* (1899), 26 Misc. 695, 56 N. Y. S. 770.

The unverified minutes of the stenographer on a former trial are inadmissible to contradict a witness.

(N. Y.) *Jaffe v. Penn R. Co.* (1906), 49 Misc. 520, 97 N. Y. S. 1037.

Under § 245a, Code Supp., a transcript of the evidence on a former trial is not admissible for impeachment purposes on a subsequent trial where the same is not certified to contain the whole of the shorthand notes of the evidence of such witness.

(Iowa) *Connell v. Connell* (1903), 119 Iowa 602, 93 N. W. 582.

A stipulation that a stenographer who reported the evidence on an examining trial would state, if present, that the transcript of his notes was incomplete, and did not contain all that was testified to by the witnesses, but that all contained in it was said by the witnesses, and was correct as far as the testimony was written, constituted a waiver of the production and proof of the notes by the stenographer only in order to authorize their use in evidence, but did not waive an objection to the relevancy of the contents of the notes.

(Ky.) *Beavers v. Bowen* (1904), 26 Ky. Law Rep. 291, 80 S. W. 1165.

Testimony given on a preliminary examination before a magistrate must be proved orally and not by reading the notes of the stenographer, as such notes are not admissible except as a memoranda to refresh his memory.

(Wis.) *Rounds v. State* (1883), 57 Wis. 45, 14 N. W. 865.

To allow the stenographer who produced a transcript of shorthand notes taken at the preliminary examination of the defendant to read directly therefrom to the jury was an irregular practice.

(Cal.) *People v. Warr* (1914), 136 Pac. (Cal. App.) 304.

Without proof of the genuineness and correctness thereof, a stenographic report of evidence on a former trial is inadmissible.

(Ga.) *Barksdale v. Security Inv. Co.* (1904), 120 Ga. 388, 47 S. E. 943.

Before the shorthand notes of the testimony of a witness in another case can be introduced in evidence, the correctness of the notes must be shown.

(Wyo.) *Fletcher v. State* (1912), 20 Wyo. 284, 123 Pac. 80.

The stenographic report of the evidence of witnesses on a former trial was properly excluded, where no sufficient predicate was laid for its admission.

(Ala.) *L. & N. R. Co. v. Dilburn* (1912), 178 Ala. 600, 59 So. 438.

Where there is no showing as to the absence of the witnesses and the stenographer does not testify either from memory or his notes that they contained a true and correct reproduction of the testimony of said witnesses, the proper foundation has not been laid for their introduction.

(Mich.) *Kaiser v. Detroit United Ry.* (1911), 167 Mich. 288, 132 N. W. 1051.

A transcript of the testimony of a Chinese witness taken at the coroner's inquest is inadmissible as hearsay, unless the interpreter or some other

witness familiar with the language who heard the testimony testified as to the accuracy of the transcript.

(Cal.) *People v. Ah Yut* (1880), 56 Cal. 119; *People v. Luls* (1910), 158 Cal. 185, 110 Pac. 580; *People v. Ong Git* (1914), 137 Pac. (Cal. App.) 283.

Where a copy of the reporter's minutes of evidence given on a former trial was not certified to by him as required by § 4141, Stats. 1898, nor proof made of the facts required to be so certified, it was not admissible, although the reporter testified that it was a correct copy made by himself of the minutes of the court as taken by him on the former trial.

(Wis.) *Wells v. Chase* (1905), 126 Wis. 202, 105 N. W. 799.

One who took down in shorthand the testimony of plaintiff at a former trial may not read from the transcript what purports to be her testimony at such trial, it not being shown the transcript is correct, the original shorthand notes not being produced and the witness having no independent recollection of the plaintiff's testimony.

(Tex.) *Combest v. Wall* (1909), 115 S. W. (Tex. Civ. App.) 354.

When the stenographer who took the notes is dead, the notes taken upon a former trial cannot be used in evidence upon a subsequent trial.

(Cal.) *People v. Qurise* (1881), 59 Cal. 343.

Where a witness promised, but failed, to be present at the second trial, plaintiff could not introduce his testimony given at a former trial, over defendant's objection.

(U. S.) *C. M. & St. P. Ry. Co. v. Newsome* (1909), 98 C. C. A. 1, 174 Fed. 394.

Where plaintiff, in an action for personal injuries, was a witness on the second trial and stated all that he could remember of the circumstances of the accident, a transcript of his testimony on a former trial of the action is not competent when offered by him.

(Ill.) *Donaldson v. Spring Valley Coal Co.* (1912), 175 Ill. App. 224.

L. O. L., § 727, subd. 3, does not authorize the admission of the testimony of a witness at a former trial which was not taken or certified by the official reporter as provided in § 932.

(Or.) *State v. McPherson* (1914), 70 Or. 371, 141 Pac. 1018.

The notes of the stenographer of the House cannot be used to impeach a bill by showing that the action on it was indefinitely postponed and never taken up.

(Okla.) *McNeal v. Ritterbusch* (1911), 29 Okla. 223, 116 Pac. 778.

Dictagraph conversation.—A stenographer concealed in an adjoining room, by means of a dictagraph, took down a portion of a conversation between defendant and an attorney. She did not see defendant, had never seen him before, and did not know or recognize his voice. She was not called as a witness to testify to statements made in her presence by the defendant, but her transcription of the incomplete notes she had taken was received in evidence against defendant as primary or independent evidence of his admissions, and not to contradict him upon cross-examination, nor as an aid to the recollection of a witness to a conversation which she had heard. *Held*, erroneous.

(N. Y.) *People v. Martin* (1915), 154 N. Y. S. (Sup. Ct.) 324.

### 9C Reading of Notes.

Notes may be read to the jury where authorized by statute.

(Mass.) *Merritt v. N. Y., N. H. & H. R. Co.* (1895), 164 Mass. 440, 41 N. E. 667.

(Mont.) *Freezer v. Sweeney* (1889), 8 Mont. 508, 21 Pac. 20.

It is proper for the jury to return to the court room during its deliberations, and upon its request for the reporter to read to them from his notes portions of the testimony, when done at the direction of the court and in the presence of counsel for both parties; and the objection that undue prominence is given the evidence thus read is not tenable.

(Iowa) State v. Perkins (1909), 143 Iowa 55, 120 N. W. 62.

The court may of its own motion have the stenographic report of a witness' testimony read to the jury in the trial of a criminal case where they differ as to the testimony of the witness, and coming into court make this difference known.

(Ga.) Morman v. State (1900), 110 Ga. 311, 35 S. E. 152.

In a civil action the court may permit the stenographer to read his shorthand notes of the testimony to the jury where they disagree as to what certain witnesses testified to, when such testimony is read in the presence of the party complaining.

(Kan.) Cannon v. Griffith (1896), 3 Kan. App. 506, 43 Pac. 829.

It is error for the court to refuse to bring in the jury at their request seconded by the request of counsel for one of the parties, and inform them as to what a witness had sworn to.

(N. Y.) Drew v. Andrews (1876), 8 Hun (N. Y.) 23.

The jury may, after retiring to their room, return, and in the presence of the court and of the parties and their attorneys have read to them the answer made to a deposition read as evidence on the trial.

(Ky.) Westerfield v. Baldwin (1894), 16 Ky. Law Rep. 318.

It is competent for the judges of such courts as employ official stenographers to cause portions of their notes of the evidence to be read over to the jury in open court, if requested by them, and also to cause typewritten transcripts of desired portions of the testimony, or even the whole of it, to be submitted to the jury if they so request. The exercise of this power must necessarily rest to a great extent in the discretion of the trial judge.

(Conn.) State v. Rubaka (1909), 82 Conn. 60, 72 Atl. 566.

The jury have a right to request the court that their recollection of the evidence may be refreshed by having the testimony, if taken down, read to them.

(Ga.) Roberts v. Atlanta Consol. St. Ry. Co. (1898), 104 Ga. 805, 30 S. E. 966.

The testimony of one of the witnesses for the state may properly be read to the jury at their request upon their return into court, in the presence of the defendant, under the provisions of Code § 5398.

(Iowa) State v. Hunt (1900), 112 Iowa 509, 84 N. W. 525.

It is within the discretion of the court to comply with the request of the jury made after they have retired to consider their verdict for information as to certain testimony which had been produced before them.

(Mich.) People v. Shuler (1904), 136 Mich. 161, 98 N. W. 986.

That the stenographer without the consent of the prisoner's counsel and at the request of the jury read to them his notes of the testimony of the prosecuting witness in chief, and not his cross examination, or other testimony in the case, is not erroneous on the ground that it was a second testifying of the witness without cross examination.

(Neb.) Jamieson v. State (1888), 25 Neb. 185, 41 N. W. 138.

The testimony of a witness for the state may properly be read to the jury in answer to their questions, where the court has no thought of asking

the jury to decide the case upon the testimony of any one witness to the exclusion of other evidence before them.

(N. Y.) *People v. Foy* (1893), 138 N. Y. 664, 34 N. E. 396.

Where after the jury retired it returned into court and asked for the testimony of a witness, the court did not exceed its discretion in also reading the testimony of another witness relative to the same matter, although it might properly have complied with the request made.

(Vt.) *Comstock v. Jacobs* (1912), 86 Vt. 182, 84 Atl. 568.

It is not error for the trial judge, in answer to a request made by the jury, to permit their recollection to be refreshed by having the stenographer read a portion of the testimony delivered on the trial, concerning which some misapprehension had arisen in the minds of the jury after they had retired.

(Pa.) *Commonwealth v. Bolger* (1910), 42 Pa. Super. Ct. 115.

It is not a valid objection to reading to the jury upon their return into court the stenographer's notes of the evidence, that the notes are secondary and inadmissible if the witnesses themselves can be produced, since the notes of the stenographer, who is a sworn officer of the court, are presumed to be correct until shown otherwise, and since the court is without authority to reopen the case or recall witnesses and admit new or additional testimony.

(Mont.) *Freezer v. Sweeney* (1889), 8 Mont. 508, 21 Pac. 20.

If the jury in a criminal case disagree as to the testimony of certain witnesses, it is not error for the court in the presence of the accused and his counsel, to require the official stenographer to read the testimony of such witnesses from his notes.

(Ga.) *Green v. State* (1905), 122 Ga. 169, 50 S. E. 53.

Denial of the jury's request made after retirement to be furnished with certain testimony is not erroneous where there was no request for further instruction and neither of the counsel requested to have the jury called back for any purpose.

(N. Y.) *Byrnes v. N. Y. & C. R. Co.* (1888), 47 Hun 637, 14 N. Y. S. R. 554.

It is not reversible error to permit the official stenographer to read to the jury at their request, upon their coming into court after having retired, a portion of the testimony of the appellant, where it does not appear but that part of the testimony which was most favorable to him was read.

(Neb.) *Darner v. Daggett* (1892), 35 Neb. 695, 53 N. W. 608.

In the absence of statute the jury have no absolute right to have the stenographer's notes taken in the case read to them. Whether their request in this regard should be complied with rests in the discretion of the court. The trial judge in his discretion may grant or deny the jury's request upon their return into court that certain testimony be read to them.

(Vt.) *State v. Manning* (1903), 75 Vt. 185, 54 Atl. 181.

Only by agreement of counsel may a stenographer read his minutes of the testimony of a witness, where the statute provides that at the request of the jury any witness may be recalled to state the testimony given by the witness in regard to a particular point about which there is a controversy.

(Tex.) *Vaughn v. State* (1907), 51 Tex. Cr. R. 180, 101 S. W. 445.

After the submission of a case to the jury, the jury was brought into court, and upon its request, by direction of the court, the stenographer read from his notes the testimony upon a certain matter. *Held*, it was serious error to permit the testimony to be read to the jury after the case had been

submitted to them. They thus heard a portion of the plaintiff's testimony twice, and the last time disconnected from all other evidence, so that they went back to their room with their memories refreshed as to this; and having listened to it out of its connection, they would be liable to give it an importance to which it was not entitled, and which they would not have given it otherwise.

(Colo.) *Hersey v. Tully* (1896), 8 Colo. App. 110, 44 Pac. 854.

It is error for the court to send the stenographer into the jury room in response to an inquiry by the jury as to the testimony, and to have him read to them from his minutes portions of the testimony, in the absence of counsel.

(N. Y.) *Otto v. Young* (1904), 43 Misc. 628, 88 N. Y. S. 188.

*Held* reversible error for the court, without consulting either of the attorneys, to permit the official reporter to go into the jury room at the request of the jury to read from his notes portions of the testimony.

(Iowa) *Fleming v. Town of Shenandoah* (1885), 67 Iowa 505, 25 N. W. 752, 56 Am. Rep. 354.

The jury, on the second day after the case was submitted to them, sent a note to the trial judge stating that they could not agree as to the facts in the evidence of two witnesses, and asking to have the stenographer's transcript of their testimony, being "satisfied that the jury cannot agree without" such transcript. *Held*, error for the court, without the consent of counsel on both sides, to order the jury afterwards brought into court and the stenographer to read them his notes of the testimony of such witnesses.

(Mo.) *Padgett v. Moll* (1900), 159 Mo. 143, 60 S. W. 121, 52 L. R. A. 854, 81 Am. St. Rep. 347, and note, 358.

The reporter, at the direction of the court, read to the jury from his notes at their request, upon their return into court, the evidence given on the trial by two of the witnesses for the state. *Held* reversible error, although the prisoner was present in court, where his counsel was not present nor notified to be present.

(Neb.) *Bartell v. State* (1894), 40 Neb. 232, 58 N. W. 716.

It is reversible error to permit a portion of the testimony of a witness as taken down to be read to the jury at their request upon their return into court, in the absence of the prisoner.

(Va.) *Jackson v. Commonwealth* (1870), 19 Gratt. (Va.) 656.

Having the stenographer in a criminal case read to the jury at its request the testimony of a witness is an irregularity in procedure; and defendant cannot except thereto on appeal without objecting at the trial.

(S. C.) *State v. Norton* (1904), 69 S. C. 454, 48 S. E. 464.

When the court and counsel differ as to what the witness testified to, the stenographer may be required by the court to read from his notes the exact words of the witness.

(Ga.) *Vann v. State* (1889), 83 Ga. 44, 9 S. E. 945.

The court may require the reporter to read his notes of the evidence for the purpose of determining what portions should be stricken, though in the presence of the jury, where a reasonable discretion in the matter is not exceeded.

(Iowa) *State v. Fieiding* (1907), 135 Iowa 255, 112 N. W. 539.

It is within the sound discretion of the trial judge to permit the stenographer to read three times, in the presence of the jury, certain testimony of plaintiff while testifying on his own behalf, and to allow him to correct a statement therein.

(Tex.) Equitable Life Assurance Soc. v. Maverick (1904), 78 S. W. (Tex. Civ. App.) 560.

The official court reporter was properly permitted to read from his trial notes to refresh the prosecuting attorney's recollection, the court stating that the reading should not be considered by the jury as evidence.

(Ala.) Loudermilk v. State (1912), 4 Ala. App. 167, 58 So. 180.

An attorney may properly in his argument to the jury read from a transcript of the notes taken by the stenographer at the trial.

(Mo.) Bradley v. City of Spickardsville (1901), 90 Mo. App. 416.

It is the right of counsel in argument to the jury to read such portions of a witness' testimony as he may desire, without reading the whole of the testimony of such witness.

(Iowa.) Goodson v. City of Des Moines (1885), 66 Iowa 255, 23 N. W. 655.

Counsel in argument may read to the jury from the stenographer's notes when obtainable, or from a transcript or depositions, within the discretion of the court.

(R. I.) Podrat v. Narragansett Pier R. Co. (1911), 32 R. I. 255, 78 Atl. 1041.

It was no abuse of discretion to permit counsel in argument to the jury to quote testimony of witnesses from the notes of the stenographer who had taken the proceedings.

(Wash.) Ralton v. Sherwood Logging Co. (1909), 54 Wash. 254, 103 Pac. 28.

There is no objection to the use by counsel in argument of the stenographic notes of the evidence.

(N. C.) Gwaltney v. Scottish Carolina Timber Co. (1894), 115 N. C. 579, 20 S. E. 465.

It is not error for a trial court to refuse to permit counsel to read to the jury from a transcript of the evidence.

(Iowa.) McConkie v. Babcock (1897), 101 Iowa 126, 70 N. W. 103.  
(Wis.) Stuckey v. Fritsche (1890), 77 Wis. 329, 46 N. W. 60.

In an action by an attorney for fees, where other attorneys were called as experts to prove the value of the services, it was not competent for the stenographer to read to the witnesses plaintiff's testimony and ask them to base their opinion on the value of the services on the testimony, but the opinions should have been based upon hypothetical questions propounded by counsel, and it was still more erroneous to read to the witnesses only a part of plaintiff's testimony and permit them to base their opinions upon what they heard read.

(Colo.) Fairbanks, Morse & Co. v. Weeber (1900), 15 Colo. App. 262, 62 Pac. 368.

It is not error to refuse to permit the stenographic notes to go to the jury in response to a request therefor to enable a juror to convince the other jurors as to the testimony, and not to aid his own memory. Rev., 1911, Arts. 1963 and 1964, does not provide for the reading of stenographic notes to a jury disagreeing as to the evidence of a witness, and in the absence of any other statute on the subject it is not error to refuse to order the reading of the stenographic notes to the jury.

(Tex.) San Antonio Tract. Co. v. Badgett (1913), 158 S. W. (Tex. Civ. App.) 803.

Upon objection being made, the court should not permit, in the argument to the jury, the reading from a stenographic report of the testimony, nor from any memorandum or report made of it during the trial; but if

counsel has read from a memorandum purporting to contain a statement made by a witness, opposing counsel, for the purpose of contradiction, may read from the stenographic report of the testimony of such witness.

(Ill.) Helde v. Schubert (1912), 166 Ill. App. 586.

It was correct for the court to refuse to allow the stenographer's notes to be read to the jury for the purpose of refreshing their recollection.

(Ill.) Westgate v. Aschenbrenner (1890), 39 Ill. App. 263.

It is within the discretion of the trial court to refuse to allow counsel to read from a transcript of the notes of the stenographer.

(Ill.) Baker v. Ill. Cent. R. Co. (1912), 161 Ill. App. 521.

(Ind.) Chicago, I. & L. Ry. Co. v. Gorman (1914), 106 N. E. (Ind. App.) 897.

The trial court may, in its discretion, deny the right of counsel for either party to read extracts from the testimony of a witness when arguing the case to the jury, or deny a request to have the stenographer read extracts from his shorthand notes.

(Wash.) Smith v. Northern Pac. Ry. Co. (1914), 79 Wash. 448, 140 Pac. 685.

It is reversible error for the jury, even by accident and wholly without fault of themselves, or of the parties or their attorneys, to take out and use during their deliberations, the stenographic report of the testimony of one of the parties of a most material character delivered before them orally, not having any such report of the testimony of the other party or of any other witness.

(Tenn.) Chrisman v. McMurray (1901), 107 Tenn. 469, 64 S. W. 711.

Detached portions of the testimony of a witness on a former trial may be used on the second trial in examining said witness as to his former testimony, without necessitating the reading of the whole of his testimony.

(Mich.) Toohey v. Plummer (1888), 69 Mich. 345, 37 N. W. 297.

Where a court stenographer has testified to questions propounded to a witness upon a former trial, and answers thereto, and for the purpose of answering such questions has been permitted to use his shorthand notes of the testimony at the former trial, and upon cross examination is asked to read from his shorthand notes all of the testimony given by such witnesses at such former trial, it is not error to sustain an objection to such question.

(Okla.) Flohr v. Territory (1904), 14 Okla. 477, 78 Pac. 565.

Although a stenographer's notes are first introduced in evidence for another purpose, they may be read to a witness for the purpose of refreshing his recollection.

(Mich.) Pickard v. Bryant (1892), 92 Mich. 430, 52 N. W. 788.

### 9D Receivable Only upon Showing Impossibility of Procuring Attendance of Witness.

Under the Iowa statute as it existed prior to 1898 a transcript was not admissible without first showing a reason for not producing the witness. A transcript is only receivable under the same circumstances as a deposition would be.

(Iowa) Baldwin v. St. L. & C. R. Co. (1885), 68 Iowa 37, 25 N. W. 918; Fleming v. Town of Shenandoah (1887), 71 Iowa 456, 32 N. W. 456.

Stenographic notes of a former trial cannot be introduced without having exhausted the best sources of information reasonably to learn whether

the witness himself cannot be found. So held where the witness' wife was not questioned as to his whereabouts.

(Mich.) *Mawich v. Elsey* (1881), 47 Mich. 10, 10 N. W. 57.

The testimony of a party that he does not know the whereabouts of a desired witness, without showing any effort to ascertain it, or to procure his testimony, is insufficient as a basis for the introduction of the testimony of such witness in a former case as secondary evidence. On both principle and authority, in a court of chancery as in a court of law, testimony given on a former trial is regarded as secondary evidence, and is incompetent unless a foundation for its admission is laid.

(U. S.) *Dover v. Greenwood* (1910), 177 Fed. (C. C.—R. I.) 946.

Testimony of a witness on a former trial held not admissible where he was a resident of an adjoining county, the word "inaccessible" in the statute meaning beyond the limits of the state.

(Ga.) *Brinson Ry. Co. v. Beard* (1912), 11 Ga. App. 737, 76 S. E. 76.

The testimony of witnesses at a former trial, who were dead or absent from the state at the subsequent trial, may be read to the jury.

(Ky.) *Yocum's Admx. v. C. N. O. & T. P. Ry. Co.* (1911), 143 Ky. 700, 137 S. W. 217.

A transcript of evidence taken on a former trial is competent to show what witnesses testified on that trial; when they are not within the jurisdiction of the court on the subsequent trial, and the official reporter who reported the case has certified that said transcript is full, true and correct.

(Ala.) *Ala. Western R. R. Co. v. Downey* (1912), 177 Ala. 612, 58 So. 918.

Evidence taken in one trial is not admissible in another unless the witness whose evidence is offered is dead or insane, or beyond the seas, or the court is satisfied that the witness has been kept away by the contrivance of the opposite party.

(S. C.) *McCall v. Alexander* (1909), 84 S. C. 187, 65 S. E. 1021.

To entitle a party to reproduce the testimony of a witness given on a former trial, he must show that by reasonable diligence he has been unable to secure the attendance of the witness.

(Neb.) *Vandewege v. Peter* (1909), 83 Neb. 140, 119 N. W. 226.

Where the sheriff's return of a subpoena stated that after diligent search he was unable to find the witness in the county, and the sheriff testified that the witness' wife informed him that he was not within the state, the witness' evidence given at a former trial was admissible.

(Neb.) *Pike v. Hauptman* (1909), 83 Neb. 172, 119 N. W. 231.

The stenographer's notes are only admissible in the case of an absent witness, and cannot be allowed to impeach a present witness.

(Ohio) *Penn. Co. v. Trainer* (1896), 12 Ohio C. C. 66.

Where a witness has testified on a former trial of the case, and his testimony has been reduced to writing in open court by the stenographic reporter, and the witness is absent from the state, such testimony, if otherwise competent, is admissible in evidence; and an objection that "no sufficient cause has been shown for the reading of the testimony" is not an objection to the mode of certifying the same, and is properly overruled.

(Neb.) *City of Omaha v. Jensen* (1892), 35 Neb. 68, 52 N. W. 833.

Where on the trial in the superior court there was evidence that a considerable search for a witness had been made in and about places he had formerly frequented and he had not been found, it was sufficient to warrant



the admission of the transcript of his testimony taken at the preliminary examination in the police court.

(Cal.) *People v. Melandrez* (1906), 4 Cal. App. 396, 86 Pac. 372.

The transcript of the testimony of a witness taken at the preliminary examination may be read in evidence at the trial where such witness is shown to be absent from the state; but such transcript is only prima facie correct, and it may be shown at the trial that other and different testimony was given by the witness.

(Cal.) *People v. Pembroke* (1907), 6 Cal. App. 588, 92 Pac. 668.

Where it is shown that a former witness has absconded and that his whereabouts are unknown, the stenographer who reported his testimony may testify from his notes what the testimony of such witness was.

(Ind.) *Iowa Life Ins. Co. v. Haughton* (1910), 46 Ind. App. 467, 87 N. E. 702.

On a trial for a felony a stenographer who testifies to having correctly made and transcribed shorthand notes of the evidence given at the preliminary examination in the presence of the defendant by a witness whose attendance cannot be procured, may read such transcript to the jury, as a witness for the state, so far as the subject matter is competent.

(Kan.) *State v. Gentry* (1912), 86 Kan. 534, 121 Pac. 352.

Where a witness is a non-resident of the state and absent at the time of the trial, his testimony at a former trial of the case may be proved.

(Ind.) *Reichers v. Dammeier* (1910), 45 Ind. App. 208, 90 N. E. 644.

Where a person who attended the trial before the examining court and took down in writing the testimony of a witness, testified from the writing and from his recollection, that it was a correct statement of the testimony of the witness, it was proper to permit him to read the testimony of the witness, who was absent and beyond the jurisdiction of the court.

(Ark.) *Petty v. State* (1905), 76 Ark. 515, 89 S. W. 465.

The testimony of a witness taken down at the preliminary trial by a stenographer and identified as the testimony of the witness by the stenographer may be read on the trial, where the witness is beyond the jurisdiction of the court at the time.

(Ala.) *Francis v. State* (1914), 65 So. 969.

That a witness was a non-resident and absent from the state at the time of trial is sufficient under Comp. Laws, 1907, § 4513-4, to authorize to be used at the trial his testimony taken at the former trial in the presence of and with opportunity to defendant to cross examine.

(Utah) *State v. Vance* (1910), 38 Utah 1, 110 Pac. 434.

When it appears that a witness sworn on a former trial was out of the state at the second trial, and could not be reached by subpoena, such testimony, when correctly transcribed, may be read in evidence on the subsequent trial under § 3475, R. S. 1898.

(Utah) *Reese v. Morgan* (1898), 17 Utah 489, 54 Pac. 759.

The testimony of a witness given at a former trial between the same parties involving the same subject matter, with the opportunity for cross-examination, taken down by the official stenographer and preserved by a bill of exceptions on appeal is admissible, if otherwise unobjectionable, in a second trial of the same cause, where the witness resides in another state and is not present at the second trial.

(Okla.) *A. T. & S. F. Ry. Co. v. Baker* (1913), 37 Okla. 48, 130 Pac. 577.

The testimony of a witness on a former trial whose whereabouts are unknown on the second trial, and diligent search has been made to locate him, is admissible.

(Tex.) *Boyd v. St. L. S. W. Ry. Co.* (1908), 101 Tex. 411, 108 S. W. 813.

Where it is shown that a witness has been absent nearly three years and no person seems to know where he is, sufficient predicate is laid for the admission in evidence of his testimony on a former trial.

(Tex.) *St. L. S. W. Ry. Co. v. Boyd* (1909), 56 Tex. Civ. App. 282, 119 S. W. 1154.

It was error to permit the testimony of a witness at a previous trial to be introduced in evidence under Civ. Code, 1895, § 5186, without preliminary proof that the witness was "deceased, or disqualified or inaccessible."

(Ga.) *Williams v. Wolff* (1908), 3 Ga. App. 737, 60 S. W. 357.

Where a witness who testified on a prior trial of a murder case cannot be found in the county at the subsequent trial, his testimony on the prior trial is admissible.

(Okla.) *Henry v. State* (1913), 10 Okla. Cr. App. 369, 136 Pac. 982.

On a second trial, where a witness at the first trial was absent, and his testimony in a brief of evidence had been agreed upon and was offered in evidence, and it was shown that the witness at the first trial was located about ten days before the trial and was telegraphed to, and that he telegraphed that he was in another state and could not be present, it made a prima facie case of inaccessibility, authorizing admission of his former testimony.

(Ga.) *Georgia, F. & A. Ry. Co. v. Bittick & Mays* (1914), 142 Ga. 191, 82 S. E. 548.

Under L. O. L., §§ 727, 1533, and Const. art. 1, § 11, testimony of witnesses out of the state, given in a former trial for larceny, is admissible, so far as relevant, against the same defendant in an action for polygamy.

(Or.) *State v. Von Klein* (1914), 71 Or. 159, 142 Pac. 549.

Where a witness is absent from the state, his testimony, given at a former trial of the same cause between the same parties is admissible, if otherwise unobjectionable.

(Neb.) *Jerich v. Union Pac. R. Co.* (1915), 97 Neb. 767, 151 N. W. 310.

Under Comp. Laws 1907, §§ 4670, 4685x1, transcript of testimony of physician on preliminary examination for homicide *held* admissible, the witness being out of the state and due diligence to subpoena him having been shown.

(Utah) *State v. Hillstrom* (1915), 150 Pac. 935.

The state may introduce in evidence stenographic notes of the testimony of a witness given at a former trial, where such witness is without the state and not available.

(Colo.) *Henwood v. People* (1914), 57 Colo. 544, 143 Pac. 373.

Testimony of a witness in a criminal case may be proved on a subsequent trial, where it is shown that the witness is dead or insane, or is beyond the jurisdiction of the state.

(Ala.) *Brown v. State* (1914), 11 Ala. App. 321, 66 So. 829.

In a prosecution for manslaughter, where the sheriff showed due diligence to serve process on a witness, and that the witness could not be found within the state, testimony of such witness on a former trial was admissible.

(Cal.) *People v. Wilson* (1915), 146 Pac. (Cal. App.) 1048.

Where a witness who testified at former trials was living and could have been summoned, the transcript of the evidence given by him at such trials was properly excluded.

(Mass.) *Chandler v. Prince* (1915), 109 N. E. 374.

The rule, in civil cases, that the evidence of a witness examined on a former trial may be introduced on a second trial on the same point in issue, does not extend to the evidence of a witness whose only excuse for not testifying was that he was too unwell.

(S. C.) *State v. Rogers* (1915), 85 S. E. 636.

#### 9E Admissible Though Stenographer Has No Independent Recollection.

A witness who has testified at a former trial on the same subject matter may be impeached by allowing the stenographer who had taken notes at the time of the former trial to read his notes after showing that they were correct, and that aside from them he had no recollection of what the witness had said.

(Wash.) *Klepsch v. Donald* (1894), 8 Wash. 162, 35 Pac. 621.

An official stenographic reporter is the officer who should take down the testimony, and his report testified to by him to be correct, although he does not remember the testimony, is competent evidence in another case of what the witness swore to in the case in which he made the report. The state may read a part of the evidence, and if so, the defendant may read the balance.

(Ga.) *Burnett v. State* (1890), 87 Ga. 622, 13 S. E. 552.

An official court stenographer who took the notes of a witness before the grand jury may, as impeaching such witness, read his notes in evidence to the jury, if he remembers and can testify that at the time it was correctly taken, and that the notes contain all the evidence of the witness on the question at variance, although at the time he is called to testify he has no independent recollection of the testimony.

(Ohio) *Baum v. State* (1904), 27 Ohio C. C. 569.

Where a stenographic reporter who took defendant's testimony on a prior proceeding identified the transcript as having been made by him, and testified as to it being a correct transcript, it is admissible, though he had no independent recollection thereof and an inspection did not refresh his memory.

(U. S.) *Lueders v. United States* (1914), 210 Fed. (C. C. A.) 419.

Under Rev. Codes, § 8020, authorizing a witness to refresh his recollection by anything written by himself, a stenographer reporting the testimony on the trial of a case and making a transcript thereof, may use the transcript to refresh his memory, or testify from it where he has no independent recollection.

(Mont.) *O'Rourke v. Grand Opera House Co.* (1914), 47 Mont. 459, 133 Pac. 965.

Where a stenographer asked whether a certain section of the code had been read to defendant at the preliminary examination said that he could not tell without examining his notes, and the record was long, he was properly allowed to refresh his recollection by the use of his notes or a verified transcript thereof.

(Cal.) *People v. Warr* (1914), 136 Pac. (Cal. App.) 304.

A court reporter was properly permitted to testify from a copy of notes taken by him at a former trial of the case, where he stated that the notes

were a correct transcription of the evidence, although he had no independent recollection thereof.

(Tex.) *Smith v. State* (1910), 60 Tex. Crim. Rep. 293, 131 S. W. 1081.

A shorthand report of the testimony of defendant as a witness before the grand jury was properly admitted as evidence at the trial for the purpose of impeaching defendant, where the stenographer who took down the evidence testified, before reading the same, that it was a true and complete report thereof, although he testified that he had no recollection of defendant's testimony independent of the shorthand copy thereof.

(Ind.) *Higgins v. State* (1901), 157 Ind. 57, 60 N. E. 685.

Where the stenographer who took the testimony on a former trial was sworn for the purpose of impeaching witnesses, but could not recollect what their testimony on the former trial was, but was willing to swear that he took the testimony correctly, and that his notes showed correctly what the witnesses testified, it was error to exclude the stenographic notes in contradiction of the witnesses.

(Tex.) *Stringfellow v. State* (1901), 42 Tex. Crim. Rep. 588, 61 S. W. 719.

The rule of evidence requiring that the best evidence shall be produced is not violated by allowing the official stenographer to read from his notes the testimony of a witness in a former trial taken and recorded by him at the time and sworn to by him as correct, although he has no independent recollection of such testimony and cannot refresh his memory from such notes.

(Okla.) *Cutter v. Territory* (1899), 8 Okla. 101, 56 Pac. 861.

#### 9F Evidence to Contradict Notes Admissible.

Although an official stenographer's transcript is prima facie correct when he testifies to its accuracy, yet it may be shown by evidence aliunde to be incorrect.

(Cal.) *Reid v. Reid* (1887), 73 Cal. 206, 14 Pac. 781; *People v. Pembroke* (1907), 6 Cal. App. 588, 92 Pac. 668.

The introduction in evidence of an official stenographer's notes at a subsequent trial, does not prevent the introduction of the testimony of an intelligent bystander upon the matters covered by the notes.

(S. C.) *Brice v. Miller* (1891), 35 S. C. 537, 15 S. E. 272.

The written notes of a stenographer are not as a matter of law the best evidence of what was testified to at a former trial, in such sense as to exclude other testimony.

(S. C.) *Brice v. Miller* (1891), 35 S. C. 537, 15 S. E. 272.

A transcript of the reporter's notes is not the only evidence admissible as to the testimony on a former trial. A person who was present and heard the former testimony and remembered it may testify as to what it was.

(Iowa) *State v. Mushrush* (1896), 97 Iowa 444, 66 N. W. 746.

To impeach a witness by proving his testimony at a former trial, other people who heard the testimony may be called, as well as the stenographer who took the evidence.

(Me.) *State v. McDonald* (1876), 65 Maine 466.

The shorthand notes of an official stenographer are not, in the absence of statute, conclusive evidence of the testimony in a preceding trial; and where a witness in a previous trial died before a second trial, it was error to exclude the testimony of a competent witness to prove the testimony of

such deceased witness given at a previous trial of the same cause and between the same parties.

(Ind.) Studabaker v. Faylor (1908), 170 Ind. 498, 83 N. E. 743.  
 (Neb.) German Natl. Bank v. Leonard (1894), 40 Neb. 676, 59 N. W. 107.

Ky. Stat., §§ 4637-4645, authorizing the appointment of an official stenographic reporter who shall take stenographic notes of the testimony and make a transcript of the same to be used in a bill of exceptions, and providing that in a criminal case the testimony taken by the reporter shall be used on a subsequent trial only on the consent of the accused, do not change the method of proving the testimony of a deceased witness by bystanders who heard and remember the testimony of the deceased witness, and do not make the reporter's notes the best evidence.

(Ky.) Austin v. Commonwealth (1906), 30 Ky. Law Rep. 295, 98 S. W. 295.

The statute providing that a reporter's notes, or a transcript thereof, shall be admissible as a deposition for the purpose of proving the testimony of a witness on a former trial, does not exclude the evidence of one who heard and remembered such testimony on the ground that the reporter's record is the best evidence.

(Iowa) State v. Dean (1910), 148 Iowa 566, 126 N. W. 692; State v. Kimes (1911), 152 Iowa 240, 132 N. W. 180.

The court stenographer's notes of the testimony at a former trial, though transcribed and shown to be correct, would not be superior to the real evidence of a witness.

(Tex.) Harris v. State (1913), 71 Tex. Cr. Rep. 463, 160 S. W. 447.

#### 9G Notes as Best Evidence.

The court stenographer's notes are the best evidence of what a witness testified to at a former trial.

(Mo.) Turner v. S. W. Mo. R. Co. (1909), 138 Mo. App. 143, 120 S. W. 128.

The best evidence of the testimony of a witness since deceased, given at a former trial, is the notes of the court stenographer, when properly vouched for by his testimony.

(Mo.) Showen v. Metropolitan St. Ry. Co. (1912), 164 Mo. App. 41, 148 S. W. 135.

The court may supply the contents of lost records by observing the best evidence rule, and the notes of a stenographer who took the deposition of a witness, now dead, is the best evidence of a deposition which was duly filed in the case and was since lost.

(Mo.) Crandall v. Greeves (1914), 181 Mo. App. 235, 168 S. W. 264.

The notes of the stenographer, who is a sworn officer of the court, are presumed to be correct until shown otherwise.

(Mont.) Freezer v. Sweeney (1889), 8 Mont. 508, 21 Pac. 20.

Where there is any doubt as to the exact testimony of a witness, the stenographic notes furnish the best proof of what the witness really did testify.

(P. R.) People v. Santiago (1910), 16 Porto Rico 446.

A reporter's transcript is presumed to be correct until questioned and the contrary made to appear.

(Ill.) C. M. & St. P. Ry. Co. v. Walsh (1894), 150 Ill. 607, 37 N. E. 1001; Sullivan v. Eddy (1894), 154 Ill. 199, 40 N. E. 482.

Neither the certificate of the reporter's notes as made by the trial judge and reporter, nor its date as appears therefrom, nor the date at which the

notes are filed with the clerk as shown by the filing, can be impeached by affidavits filed in the appellate court.

(Iowa) *In re Bruning's Estate* (1903), 122 Iowa 8, 96 N. W. 780.

A motion of appellee to withdraw the bill of exceptions for the purpose of correction in the court below will be denied, where it was alleged by appellee that, in carrying out an agreement as to a portion of the law to be copied into the transcript, the stenographer copied parts of the law not read by the witness, and the correctness of this is not admitted by appellant; and the affidavit of the trial judge filed in support of the motion shows that he has no independent recollection of what was read, and neither has the stenographer.

(Ky.) *Nicholson Coal Mining Co. v. Moulden* (1910), 138 Ky. 626, 128 S. W. 1061.

The stenographer's transcript is prima facie correct; but this is true only in the trial court, and will not be so considered in the appellate court in the absence of an authentication of the record by the judge who tried the case.

(Cal.) *People v. Woods* (1872), 43 Cal. 176; *People v. Armstrong* (1873), 44 Cal. 326.

Inasmuch as an official stenographer is an officer of the court and under oath accurately to report the testimony offered, *quaere*, whether a presumption does not arise, in the absence of evidence to the contrary, that the report so made is accurate.

(Ohio) *Hutchinson v. State* (1906), 28 Ohio C. C. 595.

The prima facie effect of the certificate to a transcript of evidence taken at a preliminary examination was not impaired by the fact that the stenographer in transcribing his original notes wrote out in longhand above certain of the characters which were obscure and puzzling, the translation of such characters, where it is not shown that such translation was not correct.

(Cal.) *People v. Garnett* (1908), 9 Cal. App. 194, 98 Pac. 247.

The record of the official court stenographer is the best evidence of the declaration of a juror made upon his *voir dire*.

(Del.) *State v. Harmon* (1902), 4 Pennewill (Del.) 580, 60 Atl. 866.

A judge may regard proposed findings and conclusions of law which a reporter took down in shorthand pursuant to the direction of the judge's predecessor, at the time the latter rendered a decision, as equivalent to the judge's minutes, and may adopt them as the findings of the court and enter judgment thereon.

(S. D.) *Edmonds v. Riley* (1902), 15 S. D. 470, 90 N. W. 139.

The mere fact that a witness whose testimony has been read by an official stenographer, states that he does not remember to have testified as the stenographer claims he did, does not impeach the stenographer's testimony, and a court and jury cannot find that he did not testify as the stenographer claims he did.

(Mich.) *Gillespie v. Beecher* (1893), 96 Mich. 486, 56 N. W. 69.

The notes or longhand manuscript of a skilled and impartial stenographer should be treated as more accurate and reliable than to trust to the imperfection of human recollection.

(Okla.) *Cutter v. Territory* (1899), 8 Okla. 101, 56 Pac. 861.

An alleged occurrence in the court below, noted by the stenographer at the private request of counsel, but not of his own knowledge, is not a fact legally known to the court.

(S. C.) *State v. Jones* (1888), 29 S. C. 201, 7 S. E. 296.

A statement in a transcript as to who was the petitioner in a case, or as to whom counsel were employed by, is not evidence of either fact.

(N. Y.) *Williams v. Lewis* (1897), 13 App. Div. 130, 43 N. Y. S. 255.

The stenographic notes of a court reporter relating to the proceedings of the trial other than the evidence, are not such a note or memorandum or memorial paper as the law contemplates shall be used as the basis for a nunc pro tunc order amending the record in a criminal case.

(Ill.) *Hubbard v. People* (1902), 197 Ill. 15, 63 N. E. 1076.

If the stenographer's transcript is referred to for the purpose of showing what exceptions were taken to testimony, and it appears from such transcript that the question raised in the Supreme Court was not raised below, it will not be considered.

(Vt.) *Coolidge v. Continental Ins. Co.* (1894), 67 Vt. 14, 30 Atl. 798.

The court stenographer's notes of the testimony at a former trial, though transcribed and shown to be correct, would not be superior to the real evidence of a witness.

(Tex.) *Harris v. State* (1913), 71 Tex. Cr. Rep. 463, 160 S. W. 447.

See other cases cited in this digest at 9F.

A stenographer's notes, when the testimony is taken through an interpreter, are not prima facie evidence of the testimony given.

(Cal.) *People v. Lee Fat* (1880), 54 Cal. 527; *People v. Ah Yut* (1880), 56 Cal. 119; *People v. Chung Ah Chue* (1880), 57 Cal. 567.

## 9H Receivable as Depositions.

A transcript of the evidence of a witness taken by the shorthand reporter may be introduced in evidence in such cases as the deposition of a witness would be admissible.

(Iowa) *Baldwin v. St. L. & C. R. Co.* (1885), 68 Iowa 37, 25 N. W. 918; *Fleming v. Town of Shenandoah* (1887), 71 Iowa 456, 32 N. W. 456; *Bank of Monroe v. Gifford* (1890), 79 Iowa 300, 44 N. W. 558.

Under Cope Supp., § 245a, if the witness is not present in the court room at the time his testimony is offered, a translation of his evidence given on the former trial may be read in evidence without any showing that the presence of said witness could not be obtained.

(Iowa) *Lanza v. Quarry Co.* (1904), 124 Iowa 659, 100 N. W. 488; *Fitch v. Mason City & C. L. Tract. Co.* (1904), 124 Iowa 665, 100 N. W. 618; *Van Norman v. M. B. A.* (1909), 143 Iowa 536, 121 N. W. 1080.

Evidence taken down by a shorthand reporter on one trial and certified by him and covered into a bill of exceptions or certificate of evidence by the court may, on the death of the witnesses, be read as a deposition on a subsequent trial of the same case involving the same issues.

(W. Va.) *Bare v. Victoria Coal & Coke Co.* (1914), 73 W. Va. 632, 80 S. E. 941.

When a stenographer's transcript is made by statute the equivalent of a deposition, a transcript of the stenographer's notes taken on a preliminary examination in a criminal case may be read in evidence upon the trial under the rules governing the admission of depositions.

(Cal.) *People v. Grundell* (1888), 75 Cal. 301, 16 Pac. 544.

Where testimony at a preliminary trial under oath was taken down by the official stenographer, but not transcribed or signed or authenticated by the judge, and an indictment was returned thereon, and the defendant did not ask that the witness sign, but cross-examined him, the requirement of Code Crim. Proc., § 204, that it be authenticated, was waived, and a tran-

script of the testimony made after the death of the witness was admissible as a deposition under § 8, Subd. 3.

(N. Y.) *People v. Vitusky* (1913), 155 App. Div. 139, 140 N. Y. S. 19.

Wilson's Rev. & Ann. Stat., Ch. 23, Art. 1, § 7 (Snyder's Comp. Laws, 1909, § 1942) making the transcript of the notes of a court stenographer evidence in a case in the same way as a deposition, does not by implication, prevent such stenographer from testifying as to what was the evidence of a witness at a former trial, as shown by his notes.

(Okla.) *Oklahoma Ry. Co. v. Boles* (1912), 30 Okla. 764, 120 Pac. 1104.

After the appointment of stenographers in the district courts (the courts recognizing that the notes of a stenographer taken at the time were probably more accurate than the memory of any witness who heard the words repeated), the practice was to have the stenographer sworn as a witness and to have him read his notes in aid of his memory, the fiction being generally maintained that like other witnesses he must speak from memory. Experience having demonstrated the impartiality and almost absolute accuracy of the notes of court stenographers, the legislature enacted Ch. 494, Laws of 1905, § 1 of which provides "that the transcript of the notes of any duly appointed court stenographer . . . verified or certified, may be introduced in evidence under like circumstances and with the same effect as the deposition, etc." *Held*, that the court reporter may read his stenographic notes in the hearing of the jury, the statute being an extension and not a limitation of the use of such notes, and not requiring that they be transcribed and filed before such testimony can be read.

(Kan.) *Wilmoth v. Wheaton* (1909), 81 Kan. 29, 105 Pac. 39.

The statute authorizing the stenographer's transcript of the testimony of a witness to be introduced in evidence by any party "under like circumstances and with like effect as the deposition of such witness" permits such use only in actions between persons who were parties to the litigation in which the testimony was given.

(Kan.) *Madden v. Stegman* (1912), 88 Kan. 29, 127 Pac. 524.

A stenographer's notes of evidence taken on a former trial may be admitted under state statutes as a deposition of a witness whose attendance cannot be secured, if the witness was fully examined and cross examined, and the report is correct and complete.

(U. S.) *Chicago, St. P., M. & O. Ry. Co. v. Myers* (1897), 25 C. C. A. 486, 80 Fed. 361.

Under the express provisions of Rev. St. 1899, § 3149, testimony taken at a former trial and preserved by bill of exceptions may be read at a subsequent trial in the same manner as the deposition of a witness.

(Mo.) *Harris v. Quincy & c. Ry. Co.* (1907), 124 Mo. App. 45, 101 S. W. 601.

Under Rev. St. 1899, § 3149, the exercise of diligence to procure the attendance of a witness who had gone without the state was not a necessary prerequisite to a party's right to read a transcript of his testimony taken on a former trial as his deposition.

(Mo.) *Ratliff v. Quincy & c. R. Co.* (1908), 131 Mo. App. 118, 110 S. W. 606.

Under L. O. L., §§ 836, 852 and 932, the testimony of a witness at a former trial as transcribed by the official reporter, is substantially a deposition which may be read at any subsequent hearing, providing such witness is without the state.

(Or.) *Beard v. Royal Neighbors* (1911), 60 Or. 41, 118 Pac. 171.



When testimony has been taken by a stenographer on an examination, it should be read over to the witness for correction, and a copy should not be used in evidence unless it has been compared with the original.

(Mich.) *People v. McKinney* (1882), 49 Mich. 334, 13 N. W. 619.

Stenographer's minutes do not bear upon their face any such evidence of accuracy as the signing by the witness himself gives to the deposition.

(Mich.) *People v. Becker* (1882), 48 Mich. 43, 11 N. W. 779.

Where depositions before a register in bankruptcy have been taken stenographically and transcribed, such depositions will be suppressed if not read to and signed by the witness, although his subsequent attendance for that purpose could not be procured.

(U. S.) *In re Cary* (1881), 9 Fed. 754.

Gen. St. 1909, § 2407, permitting the use of stenographer's transcript in testimony does not restrict such use to the limitations attaching to a deposition under §§ 5931 and 5953. (Code Civ. Proc. §§ 337, 358.)

(Kan.) *New v. Smith* (1915), 94 Kan. 6, 145 Pac. 880.

Ky. St. § 4643 does not abrogate Code governing depositions, and testimony of witness at former trial cannot be used on second trial because temporarily unable to attend court on account of illness, and affidavit and motion prescribed by section must be filed before trial is entered on.

(Ky.) *So. Ry. in Ky. v. Owen* (1915), 176 S. W. 25.

#### 9I Effect of Erroneous Admission.

The erroneous admission of a stenographer's notes will not justify a reversal when the notes are merely cumulative of evidence already given.

(Mo.) *Byrd v. Hartman* (1897), 70 Mo. App. 57.

## 10—RIGHTS AND DUTIES AS WITNESSES.

- A Should be Sworn.
- B Testifying from Notes.
- C Right to Consult Notes.

### 10A Should Be Sworn.

When a stenographer testifies as a witness and reads his notes of the testimony on a former trial as evidence, he should take an oath, although he is a sworn officer of the court. But if the opposing party knows of the failure to take the oath and does not object within a reasonable time, such failure is waived.

(Vt.) *State v. Hannett* (1881), 54 Vt. 83.

An unsworn statement of a stenographer made some time after the trial to the effect that he had reported the judge's charge, but that he had lost the notes, is insufficient to show that the charge was taken down.

(Wis.) *Penberthy v. Lee* (1881), 51 Wis. 261, 8 N. W. 116.

### 10B Testifying from Notes.

When a stenographer is asked as a witness in a case as to what was said by a certain witness on a former trial which he reported, he may refresh his recollection by referring to the notes he made at the time.

(Cal.) *People v. Carty* (1888), 77 Cal. 213, 19 Pac. 490; *People v. Lem You* (1893), 97 Cal. 224, 32 Pac. 11.

(Ind.) *Keith v. State* (1901), 157 Ind. 376, 61 N. E. 716.

(Iowa) *State v. Smith* (1896), 99 Iowa 26, 68 N. W. 428.

(Minn.) *State v. George* (1895), 60 Minn. 503, 63 N. W. 100; *Stahl v. City of Duluth* (1898), 71 Minn. 341, 74 N. W. 143.

(Wash.) *Kellogg v. Scheurman* (1897), 18 Wash. 293, 51 Pac. 344.

When a stenographer is called to prove the testimony of a witness on a former trial, he may consult his notes before answering, although he has no independent recollection of the testimony.

(Ill.) *Chicago & Alton R. Co. v. Robinson* (1884), 16 Ill. App. 229.

(Iowa) *State v. Smith* (1896), 99 Iowa 26, 68 N. W. 428.

(Kan.) *State v. Baldwin* (1886), 36 Kan. 1, 12 Pac. 318.

(Mich.) *Merrill v. Lelsenring* (1911), 166 Mich. 220, 131 N. W. 538.

(Minn.) *Stahl v. City of Duluth* (1898), 71 Minn. 341, 74 N. W. 143.

Parol testimony as to what a witness testified to on a former trial is not rendered incompetent by the fact that a copy of the stenographer's minutes of his testimony is inaccessible to counsel.

(Mich.) *Lange v. Klatt* (1903), 135 Mich. 262, 97 N. W. 708.

The testimony of a stenographer as a witness should not be stricken out because he admits on cross-examination that he has no independent recollection of the facts testified to without referring to his notes.

(Ind.) *Higgins v. State* (1901), 157 Ind. 57, 60 N. E. 685.

(Neb.) *Miles v. Walker* (1902), 66 Neb. 728, 92 N. W. 1014.

In a prosecution for homicide evidence given by the court reporter from his minutes concerning defendant's testimony on a prior trial of the issue of defendant's insanity was not objectionable because there was no reporter present to take down the oral testimony as read to the jury.

(Wis.) *Duthey v. State* (1907), 131 Wis. 178, 111 N. W. 222, 10 L. R. A. (N. S.) 1032.

A stenographer who takes down testimony may testify from his notes what the testimony was, although he has no independent recollection of the facts. It is immaterial that the shorthand notes are not intelligible to persons generally.

(Iowa) *State v. Smith* (1896), 99 Iowa 26, 68 N. W. 428; *O'Brien v. Stambach* (1897), 101 Iowa 40, 69 N. W. 1133.

An official court reporter for the circuit court, under the statute, may testify in rebuttal as to evidence given at a preliminary hearing before a committing magistrate, when the testimony is given independently of any record, or from memory as refreshed by a transcript of notes taken by the witness at the preliminary hearing.

(Fla.) *Snelling v. State* (1905), 49 Fla. 34, 37 So. 917.

The official stenographer who took the testimony given on a previous trial and identified a typewritten copy as the testimony given, was rightly permitted to give evidence as to the contents, although he had no recollection of the testimony.

(Mich.) *Johnson v. Union Carbide Co.* (1912), 169 Mich. 652, 135 N. W. 1069.

A stenographer may read his notes in evidence if he states that he correctly took the evidence, although he has no independent recollection of the testimony.

(Kan.) *Wright v. Wright* (1897), 58 Kan. 525, 50 Pac. 444.

The evidence of a witness given on a former trial may be proven upon a subsequent trial by the stenographer who took the evidence, when the witness is out of the jurisdiction of the court, provided the stenographer testifies that he made a transcript of his notes, and that the same was correct.

(Kan.) *Smith v. Skulley* (1903), 66 Kan. 139, 71 Pac. 249.

The reporter read from his shorthand notes taken upon another trial the questions propounded to defendant and the answers thereto, and then testified that the questions were propounded to defendant and that he gave such answers. *Held*, there was no error, this being one of the cases where a witness may read from a memorandum made by him at the time.

(Iowa) *State v. Kendig* (1907), 133 Iowa 164, 110 N. W. 463.

Testimony of a stenographer that by the aid of his minutes he can give "just as it was given in court" the testimony taken at a former trial, is sufficient proof of the correctness of such minutes.

(Mich.) *People v. Mackard* (1896), 109 Mich. 623, 67 N. W. 968.

The fact that a stenographer's notes cannot be read by people in general does not render his testimony inadmissible, when such testimony is based on a reading of the notes and he testifies he took down the evidence correctly, but has no independent recollection thereof.

(Iowa) *State v. Smith* (1896), 99 Iowa 26, 68 N. W. 428.

An official stenographer may, in Indiana, testify to and read his stenographic notes of the testimony of witnesses who appeared before the grand jury.

(Ind.) *Keith v. State* (1901), 157 Ind. 376, 61 N. E. 716.

The stenographer was called to prove the testimony of a witness given on a former trial, such witness having subsequently become insane. The stenographer stated that he had compared his notes with the original bill of exceptions filed in that case, and showed wherein the bill of exceptions differed from his notes. Plaintiff's counsel then read from the bill of exceptions the testimony of such witness. *Held*, that such action was of doubtful propriety, especially when the court referred to the same as a court document, and that the practice should not be encouraged, but that no actual error was committed.

(Ill.) *P. C. C. & St. L. Ry. Co. v. Story* (1902), 104 Ill. App. 132.

To impeach a witness a stenographer will not be allowed to testify to isolated portions of testimony on a former trial, when the witness' attention has not been called thereto.

(Mich.) Seligman v. Ten Eyck (1884), 53 Mich. 285, 18 N. W. 818.

When an official stenographer is asked to reproduce the testimony of a witness, who has since died, his shorthand notes should be transcribed either by himself or some one who is able to do so, and it makes no difference whether such translation be made orally or in writing.

(Ind.) Bass v. State (1893), 136 Ind. 165, 36 N. E. 124.

A shorthand reporter was called in open court to read from his notes testimony taken in the same case two years previous. He objected upon the ground that he had been given no opportunity to prepare to give such testimony. The court sustained the objection, stating that a shorthand reporter could not be called as an expert without having been given an opportunity to prepare himself the same as any other expert.

(U. S.) Johnson v. So. Pacific Co. (1901), (C. C.—Utah—Unreported).

### 10C Right to Consult Notes.

An official stenographer is entitled to use his notes of the testimony to refresh his recollection as to the statements made by a witness on a former trial.

(Ky.) Ill. Cent. R. Co. v. Johnson (1909), 115 S. W. 798; North River Ins. Co. v. Walker (1914), 161 Ky. 368, 170 S. W. 983.

The stenographer who took the testimony of a witness at a former trial may refresh his memory from the longhand transcript of the evidence taken.

(Okla.) Harmon v. Territory (1905), 15 Okla. 147, 79 Pac. 765.

A reporter may refresh his memory by reference to an insufficiently certified transcript and testify orally as to what occurred on a previous examination.

(Cal.) People v. Carty (1888), 77 Cal. 213, 19 Pac. 490.

When a stenographer after refreshing his recollection by examining his notes, testifies from independent recollection, no error is committed in allowing him to testify as to what another witness testified to on a former trial.

(Fla.) Davis v. State (1902), 44 Fla. 32, 32 So. 822.

(Ind.) Miller v. Preble (1895), 142 Ind. 632, 42 N. E. 220.

(Neb.) Small v. Poffenbarger (1891), 32 Neb. 234, 49 N. W. 337.

A stenographer who is called to testify as to what a witness stated on a former trial, cannot use his notes if he can remember the testimony without reference thereto.

(Kan.) State v. Baldwin (1886), 36 Kan. 1, 12 Pac. 318.

The testimony of a shorthand reporter in regard to evidence introduced upon a former trial, when based upon the recollection of the evidence itself, and not of his notes, is competent.

(Iowa) Moore v. Moore (1874), 39 Iowa 461.

A stenographer who is called to prove what a witness said on a former trial cannot read his notes aloud unless the parties agree to the reading, and in such case the agreement must be set out in the record.

(Wash.) Kellogg v. Scheurman (1897), 18 Wash. 293, 51 Pac. 344.

Before a stenographer who is called to prove the testimony of a witness on a former trial can be allowed to refresh his recollection by the use of his stenographic notes, he must produce the notes in court.

(Ill.) Chicago & Alton R. R. Co. v. Robinson (1884), 16 Ill. App. 229.

## 11—NEW TRIALS.

- A In General.
- B When Party is Deprived of Transcript.
- C For Error in Minutes.

### 11A In General.

The failure to appoint an official reporter is not a cause for a new trial, unless request is made of the court for such appointment.

(Ind.) *Chicago & S. E. Ry. Co. v. McEwen* (1904), 35 Ind. App. 251, 71 N. E. 926; *Rudisell v. Jennings* (1906), 38 Ind. App. 403, 77 N. E. 959, (Rehearing denied, 78 N. E. 263).

The refusal of the court in a criminal case to appoint a stenographer while the regular stenographer is absent, is not error where a bill of exceptions prepared by the accused is approved by the judge, and counsel agree upon a statement of facts, and there is no showing that defendant was injured.

(Tex.) *Andrews v. State* (1903), 76 S. W. (Tex. Cr. R.) 918.

Although a court should employ a stenographer upon request, when authorized by statute so to do, yet a failure to do so will not require a reversal when the party requesting the stenographer was not injured by the refusal.

(Tex.) *Schoenfeldt v. State* (1892), 30 Tex. App. 695, 18 S. W. 640.

A case will not be reversed because the court refused to delay a trial until a stenographer could be obtained, unless such refusal causes a hardship to the party requesting the stenographer or such party is prejudiced.

(Neb.) *Home Fire Ins. Co. v. Johnson* (1894), 43 Neb. 71, 61 N. W. 84.

Although the statute provides that a court shall on the application of either party appoint a stenographer, a refusal to make such appointment would not be reversible error, unless the complaining party was injured thereby.

(Tex.) *Hines v. Holland* (1886), 3 Willson Civ. Cas., Tex. Ct. App., § 99.

Compelling appellant to go to trial without a stenographer is not ground for a new trial, when no objection is made at the time and no showing is made that defendant was in any way prejudiced.

(S. C.) *State v. Smith* (1899), 56 S. C. 378, 34 S. E. 657.

Trial in the absence of an ill stenographer, when no objection was made at the time, is not error.

(S. C.) *State v. Johnson* (1894), 43 S. C. 123, 20 S. E. 988.

The failure to require the stenographer to file his notes is not an error for which an order granting a new trial will be reversed, if he is incompetent and could not take down the testimony as it was given nor read such notes as he did take.

(Cal.) *Sais v. Sais* (1874), 49 Cal. 263.

A new trial should not be granted for alleged misconduct of plaintiff's counsel in his address to the jury, when the only proof of what he said is given by the stenographer, who admits that his notes are not full and that they were not taken down when uttered, but when repeated to him by the defendant's counsel without the knowledge of the court or the plaintiff's counsel.

(N. Y.) *Chesebrough v. Conover* (1893), 66 Hun 634, 50 N. Y. S. R. 463, 21 N. Y. S. 566.

On appeal of an action for a new trial, where the record recites that on the trial the stenographer's report of the evidence of the former trial was read by both parties, the evidence adduced in the original trial cannot be considered, where it is not made part of the record, and the parties have not agreed that the transcript of the original appeal may be considered by the court.

(Ky.) Flint v. Ill. Cent. R. Co. (1906), 29 Ky. Law Rep. 1149, 97 S. W. 736.

Where a referee demanded and received from the stenographer employed to take testimony, one-third of the stenographer's fees, coupled with other irregularities, held that the referee was guilty of grave misconduct and that his report should be set aside.

(N. Y.) Dickinson v. Earle (1901), 63 App. Div. 134, 71 N. Y. S. 227.

The provisions of § 4670, Comp. Laws 1898, do not make the transcript evidence per se, or make the trial depend upon it having been filed, especially when no good excuse is shown for not getting the transcript.

(Utah) State v. Morgan (1903), 27 Utah 103, 74 Pac. 526.

Where on appeal it appeared that a statement of facts in the usual form would have been sufficient, the judgment would not be reversed because the stenographer failed to comply with appellant's request to file the report within the proper time, where appellant did not by mandamus seek to require the stenographer to file the report, or failing in that, to prepare a statement of facts in the usual form.

(Tex.) Smith v. Pecos Valley Co. (1906), 43 Tex. Civ. App. 204, 95 S. W. 11.

#### 11B When Party is Deprived of Transcript.

If a party is deprived of transcript by fault of the reporter so that he is thereby deprived of his bill of exceptions, the court will in a proper case grant him a new trial.

(Neb.) Curran v. Wilcox (1880), 10 Neb. 449, 6 N. W. 762.

A party or his attorney is justified in relying upon the stenographic reporter for a transcript of the oral proceedings of a trial, and if, without fault on his part, such transcript cannot be furnished by the reporter, and in consequence of this inability a bill of exceptions cannot be had, a court of equity in a proper case will grant a new trial.

(Neb.) Holland v. C. B. & Q. R. Co. (1897), 52 Neb. 100, 71 N. W. 989; Mathews v. Mulford (1898), 53 Neb. 252, 73 N. W. 661.

Under a statute creating the office of court stenographer and prescribing his duties, including the furnishing of a transcript of his notes to any person having an interest therein, such stenographer is an officer of the court in duty bound to perform the duties of his office with fidelity and without unnecessary delay, and litigants and their counsel are entitled to rely with confidence upon their ability to obtain from that officer any part of the proceedings required to be taken down by him; and where the stenographer either "lost or mislaid" the notes in a murder case, defendant, who had been convicted, was granted a new trial.

(Wyo.) Richardson v. State (1907), 15 Wyo. 465, 89 Pac. 1027, 12 A. & E. Cas. 1048.

If the stenographer did not comply with the judge's order requiring him to furnish a statement of facts to an indigent accused upon affidavit, accused would be required to sue out mandamus to compel the issuance of the statement by the stenographer, in order to enable accused to procure a reversal for failure to have a statement of facts.

(Tex.) Wood v. State (1912), 150 S. W. (Tex. Crim. R.) 194.

A litigant should not be deprived of the right to have his case heard in the court of last resort on account of the failure of the official stenographer to furnish him with a copy of the testimony.

(Neb.) *State ex rel v. Gaslin* (1891), 32 Neb. 291, 49 N. W. 353.

Where defendant is unable to perfect his appeal without fault on his part, he should be granted a new trial either by the trial court or on appeal by the Supreme Court.

(Okla.) *Farmer v. State* (1911), 5 Okla. Cr. 151, 114 Pac. 753.

Where a stenographer lost the shorthand notes taken by him in a case, through no fault of appellant, and appellant is unable to bring up the record for review, the case will be remanded for a trial de novo.

(La.) *Barton v. Burbank* (1907), 119 La. 224, 43 So. 1014.

Where the papers in the case and the notes of the trial of an action have been lost or mislaid, the only mode by which justice can be had is to grant a new trial, if it appear that the party seeking it has been guilty of no laches.

(N. C.) *Sanders v. Norris* (1880), 82 N. C. 243.

A new trial will be granted without regard to the merits of the case where it appears after argument of the motion for new trial that the stenographer's notes of the testimony were lost whereby it became impossible for the losing party fully to present his case for review by the supreme court.

(Pa.) *James v. French* (1887), 5 Pa. Co. Ct. 270.

Accused is entitled to reversal where, notwithstanding diligence on his part to procure filing of statement of facts in time, it was not filed within the time required by law.

(Tex.) *Parker v. State* (1912), 145 S. W. (Tex. Cr. R.) 347.

Laws of 1889, page 144, making the notes of an official stenographic reporter, when transcribed and certified by him, merely prima facie evidence of the facts stated therein, does not require the successor of a trial judge who died after having within the term extended beyond the term the time for presenting the bill of exceptions, to settle and sign the bill on the strength of such notes if the facts are disputed. It is proper in such case to grant a new trial.

(Or.) *Henrichsen v. Smith* (1896), 29 Or. 475, 42 Pac. 486, 44 Pac. 496.

Where the official stenographer failed to comply with the order of the court to furnish a free transcript of his notes to a defendant unable to pay for the same, and the court took no steps to compel him to do so, and the stenographer could not comply with the order of the Court of Criminal Appeals because he had lost a part of his notes, the case must be reversed and remanded.

(Tex.) *Burden v. State* (1913), 156 S. W. (Tex. Cr. R.) 1196.

The death of a stenographer and consequent inability of a party to obtain a copy of the testimony are not grounds for granting a new trial.

(N. Y.) *Lidgerwood Mfg. Co. v. Rogers* (1889), 56 N. Y. Super. Ct. 350, 21 N. Y. S. R. 452, 4 N. Y. S. 716.

(Okla.) *Butts v. Anderson* (1907), 19 Okla. 367, 91 Pac. 906.

The failure or inability of a court reporter to furnish the defeated party with a transcript of the evidence is no ground for a new trial.

(Minn.) *Peterson v. Lundquist* (1908), 106 Minn. 339, 119 N. W. 50.  
(N. D.) *Higgins v. Rued* (1915), 153 N. W. 389.

There is no statutory authority for granting a new trial because of casualty or misfortune occurring after the entry of the judgment which the petitioner seeks to vacate, as where the reporter who took the evidence died and his notes were not certified and could not be translated, thus preventing an appeal.

(Iowa) *Dumbarton Realty Co. v. Erickson* (1909), 143 Iowa 677, 120 N. W. 1025; *Ross v. Leader* (1909), 122 N. W. 812.

The fact that the illness of the reporter culminating in his death began prior to the rendition of judgment did not have the effect to render a failure to have his notes of the trial certified or translated a casualty occurring before the trial within the meaning of Code § 4091.

(Iowa) *Dumbarton Realty Co. v. Erickson* (1909), 143 Iowa 677, 120 N. W. 1025.

If equity can grant a new trial when the record of evidence is lost or destroyed, it will not do so where after judgment the reporter died without having certified his notes and they cannot be translated, as the party had opportunity to have the testimony made of record, the time for certification not having fully expired; and even if the testimony in such case should be regarded as lost it might have been restored in substance under Code § 4127.

(Iowa) *Dumbarton Realty Co. v. Erickson* (1909), 143 Iowa 677, 120 N. W. 1025.

When, by reason of the death of an official court stenographer, a party who has filed a motion for a new trial at law, or has taken an appeal in equity, is unable to procure a report of the evidence, the law court has no authority to remand the case for a new trial, but must overrule the motion, or dismiss the appeal for want of prosecution, the law court being a creature of the statute and having no powers except such as are given it by statute. The statutory right of a hearing upon a motion for a new trial is conditional upon the furnishing of the law court with a report of the evidence, and this condition cannot be waived or dispensed with by the law court.

(Me.) *Stenographer Cases* (1905), 100 Maine 271, 61 Atl. 782.

The fact that an official reporter fails to furnish appellant with a transcript in time to file the same within the time prescribed is not ground for a new trial, where it appears that appellant was not diligent in ordering the same.

(Iowa) *McKinley v. McKinley* (1904), 123 Iowa 574, 99 N. W. 162.

A new trial will not be granted because a stenographer's notes have been destroyed by fire, when no effort has been made to restore the evidence.

(Dak.) *Golden Terra Mining Co. v. Smith* (1881), 2 Dak. 377, 11 N. W. 98.

The fact that the stenographer who took the testimony at a trial loses his notebook and is unable to make a transcript thereof for the losing party, is not sufficient ground for a new trial.

(Okla.) *Farmers & Merchants Bank v. Welborn* (1912), 32 Okla. 1, 121 Pac. 620; *Thornsberry v. State* (1912), 8 Okla. Cr. App. 88, 126 Pac. 590.

### 11C For Error in Minutes.

In an action to determine title to real property in which there was a dispute as to the line between two lots, an error in the stenographer's minutes of the testimony, making the erection of the house upon the line by the grantor appear to have been after instead of before the conveyance, *held* ground for new trial.

(N. Y.) *Griffith v. Dickinson* (1895), 90 Hun 14, 71 N. Y. S. R. 518, 35 N. Y. S. 595.

On a trial before a judge, the fact that he is absent when a part of the testimony is taken down, and did not require the stenographer to reduce it to writing, is no ground for vacating the judgment, when there is no dispute as to the facts.

(N. Y.) *Crook v. Hamlin* (1893), 71 Hun 136, 54 N. Y. S. R. 77, 24 N. Y. S. 543.



## 12—PERSONAL RIGHTS OF STENOGRAPHERS.

- A Exemption of salary from execution.
- B Copyright.
- C Taxation.
- D Combinations.
- E Miscellaneous.

### 12A Exemption of Salary from Execution.

The salary of one employed as a stenographer or private secretary is, under the Georgia code, exempt from execution.

(Ga.) Abrahams v. Anderson (1888), 80 Ga. 570, 5 S. E. 778, 12 Am. St. Rep. 274; Cohen v. Aldrich (1908), 5 Ga. App. 256, 62 S. E. 1015; Empire Inv. Co. v. Sullivan (1909), 133 Ga. 391, 65 S. E. 882.

### 12B Copyright.

Shorthand characters cannot be copyrighted. The copyright of a book describing a system of shorthand does not protect the system when considered simply as a system apart from the language by which it is explained.

(U. S.) Griggs v. Perrin (1892), 49 Fed. (C. C.) 15.

### 12C Taxation.

Shorthand schools are not exempt from taxation in Louisiana.

(La.) Lichtentag v. Tax Collector (1894), 46 La. Ann. 572, 15 So. 193.

### 12D Combinations.

When the object of an association of stenographers is to control the price charged by the members thereof, such an association is an illegal combination, and its rules will not be enforced by the courts.

(Ill.) More v. Bennett (1892), 140 Ill. 69, 29 N. E. 888.

### 12E Miscellaneous.

A stenographer of a corporation is entitled to share in a general bequest to the employes of the corporation, even though a special bequest is also given to her by the will.

(N. H.) Abbott v. Lewis (1913), 77 N. H. 94, 88 Atl. 98.

### 13—POWER OF COURTS.

- A To compel performance of duties by stenographer.
- B To correct minutes.
- C To fix compensation.
- D To refuse to stop witness so that counsel can take notes.
- E To compel county to pay for transcript for defendant in a criminal case.
- F To compel payment of fees.
- G To compel furnishing of transcript.

#### 13A To Compel Performance of Duties by Stenographer.

When an attorney is hindered in the trial of a case by the failure of the stenographer to furnish him with a transcript, he is entitled to move the court for an order on the stenographer to furnish a transcript.

(Pa.) Commonwealth v. Ezell (1905), 212 Pa. 293, 61 Atl. 930.

The safer practice is to apply for a rule against a stenographer who fails to furnish a transcript of the record in time, in order to show due diligence, and to apply to a judge or justice for an extension of time before expiration.

(S. C.) Love v. Turner (1906), 75 S. C. 547, 56 S. E. 232.

The only remedy appellant has where the reporter fails to get out a transcript in due time is to apply to the district judge by motion, or for an order or writ of mandate directing the reporter to furnish the transcript within the specified time.

(Idaho) Fischer v. Davis (1913), 24 Idaho 217, 133 Pac. 910.

If the stenographer did not comply with the judge's order requiring him to furnish a statement of facts to an indigent accused upon affidavit, accused would be required to sue out mandamus to compel the issuance of the statement by the stenographer, in order to enable accused to procure a reversal for failure to have a statement of facts.

(Tex.) Wood v. State (1912), 150 S. W. (Tex. Cr. R.) 194.

If a party postpones or neglects to take his appeal and to order his transcript until so near the expiration of the time that it is physically impossible to complete the record in time, he does so at his peril, and the trial court may rightfully decline to enter any order which it knows that the reporter, in the exercise of reasonable diligence, cannot comply with. *Held*, the reporter being busy with other matters, that he properly refused the demand of counsel to furnish a transcript inside of fifteen days.

(Iowa) Smith v. Smith (1907), 132 Iowa 700, 109 N. W. 194, 119 Am. St. Rep. 581.

It is the duty of a court to see that the duties of a stenographer are at all times properly performed without delay.

(Pa.) Commonwealth v. Ezell (1905), 212 Pa. 293, 61 Atl. 930.

The writ of mandamus will not issue to compel the performance of a mere service. Thus where a legislative committee appointed under a joint resolution to inquire among other things whether money had at any time been paid by certain parties to certain members of the legislature for the purpose of influencing legislation, with power to send for persons and papers, but without authority conferred by the resolution to employ a clerk, employed a stenographer who took the testimony given before the committee, the court refused to issue a writ of mandamus to compel the stenographer

to furnish the committee a transcript of his minutes that it might be made a part of their report.

(Vt.) *Bailey v. Oviatt* (1874), 46 Vt. 627.

A stenographer present and reporting the trial of the case under the private employment of the defendant in a criminal case is not under the control of the court, nor under any obligation to, nor can he be required to, furnish a copy of any part of the proceedings either to the court or to opposing counsel or party. His duties are measured by his contract relations with the party who employed him. To say therefore merely because a party has a stenographer present reporting the case that therefore the court need not charge the jury in writing when requested, is to practically annul the statute requiring the court on request to charge the jury in writing.

(Wash.) *State v. Mayo* (1906), 42 Wash. 540, 85 Pac. 251.

Under the laws of 1903 requiring the court upon request to instruct the jury in writing, unless the same is taken down by the stenographic reporter, the employment of a reporter privately who is not subject to the control of the court, will not excuse the failure to instruct the jury in writing.

(Wash.) *State v. Mayo* (1906), 42 Wash. 540, 85 Pac. 251.

But if such stenographer is employed by both parties, he is sufficiently under the control of the court to constitute his report "instructions in writing" under the above statute.

(Wash.) *Collins v. Hoffman* (1907), 48 Wash. 184, 93 Pac. 220; *Sturgeon v. Tacoma E. Ry. Co.* (1908), 51 Wash. 124, 98 Pac. 87; *Schon v. M. W. A.* (1909), 51 Wash. 482, 99 Pac. 25; *State v. Erickson* (1909), 54 Wash. 472, 103 Pac. 796.

A mandamus will lie to compel the official court stenographer to do an official act, and it is not necessary that the mandamus be directed to the court to compel the stenographer to do his duty.

(Colo.) *Keady v. Owers* (1902), 30 Colo. 1, 69 Pac. 509.

### 13B To Correct Minutes.

Although a statute declares that an official stenographer's notes shall be deemed official and the best authority in any matter of dispute, yet the notes are only the best evidence when made under the approval of the court, and the notes are subject to modification and change in accordance with what the judge judicially finds to be the facts.

(Pa.) *Taylor v. Preston* (1875), 79 Pa. 436.

It is not only within the power, but it is the duty of the court to correct the stenographer's notes, whether of evidence or of the charge, if they are incorrect, and to supply omissions therein.

(Pa.) *Taylor v. Preston* (1875), 79 Pa. 436; *Connell v. O'Neill* (1893), 154 Pa. 582, 26 Atl. 607; *Commonwealth v. Arnold* (1894), 161 Pa. 320, 29 Atl. 270; *Von Storch v. Von Storch* (1898), 4 Lack. L. N. 25; *Commonwealth v. Van Horn* (1898), 188 Pa. 143, 41 Atl. 469; *Commonwealth v. Morrison* (1899), 193 Pa. 613, 44 Atl. 913; *Toddes v. Hafer* (1904), 25 Pa. Super. Ct. 78.

The transcript of the evidence is a record of the circuit court, and if mistakes have been made in it, they may be corrected in that court as other clerical errors are corrected.

(Ky.) *Center Lumber Co. v. Miller* (1914), 158 Ky. 130, 164 S. W. 318.

A case was held settled in accordance with the stenographer's minutes, though the attorney swore he took an exception which did not appear in the minutes. The attorney had a cold and was partially deaf and spoke

in a low tone, but supposed the stenographer heard him. The court says this suggested a cause which might have led to it having escaped the notice of both the court and the stenographer.

(N. Y.) Canzi v. Conner (1878), 43 N. Y. Super. Ct. 569.

The stenographer's notes of the charge on a trial for murder showed the following sentence: "Every unlawful killing is presumed to be murder in the first degree." The trial judge upon examining the transcript inserted the words "though not" after the word "murder" and stated in his opinion on a motion for a new trial that the words "though not" were in the charge as delivered. The trial judge in the charge had fully and correctly defined the degrees of murder. *Held*, that the Supreme Court would take the record as it stood, and would assume that the words "though not" had been inadvertently omitted by the stenographer.

(Pa.) Commonwealth v. Van Horn (1898), 188 Pa. 143, 41 Atl. 469.

It is not error for the trial judge on rule to amend the stenographer's record of a murder trial, over five years after the trial, to refuse to permit one of the trial attorneys to testify from recollection that certain objections to admissions of evidence were made and rulings had thereon, when the record and the recollection of the judge show no such objections or rulings, and the answer of the attorney for the commonwealth denies that they were made.

(Pa.) Commonwealth v. Leskoski (1909), 225 Pa. 382, 74 Atl. 217.

An evident mistake of the reporter in taking down the testimony of a witness may be corrected on motion supported by affidavits.

(Iowa) Campbell v. Campbell (1902), 118 Iowa 131, 91 N. W. 894.

An attorney has no right to make changes in the stenographer's notes, even for the purpose of correcting what he claims to be errors therein. Such corrections must be made only on application to the court.

(Iowa) Long v. Valleau (1893), 87 Iowa 675, 55 N. W. 31.

When the record of a case has once been made in the trial court by certification and filing of the shorthand notes and transcript, it is not subject to amendment by the reporter alone. This can only be done upon application, notice and order of court.

(Iowa) First National Bank v. Fulton (1912), 156 Iowa 734, 137 N. W. 1019.

When the stenographer who took the evidence dies before the writing out of the notes, and no one else is able to translate his notes, the evidence may be supplied in the same way that lost or destroyed records are supplied.

(Pa.) Walter v. Sun Fire Office (1894), 165 Pa. 381, 30 Atl. 945.

Where material evidence is not returned because it has been lost, the only remedy for the aggrieved party is to make application to reproduce the evidence, by affidavits or witnesses, before the appellate court, as provided by Code Civ. Pro., §§ 3056 and 3213.

(N. Y.) McGovern v. Eldredge (1892), 1 Misc. 170, 48 N. Y. S. R. 692, 20 N. Y. S. 654.

The remedy of a party desiring to appeal from the justice's judgment where shorthand notes taken by the official stenographer at the trial had been lost was offered by Code Civ. Pro., which provides that where the justice is unable to make a return, the appellate court may receive affidavits or examine witnesses as to the evidence or other proceedings taken, and may determine the appeal as if a return had been duly made by the justice.

(N. Y.) Walker v. Baerman (1899), 44 App. Div. 587, 61 N. Y. S. 91.

While the notes of the stenographer are valuable as data from which to make up a bill of exceptions, they are by no means infallible, since it not infrequently happens that the stenographer fails to put down a correct report of an expression, a statement or an admission.

(Mo.) Jackson v. Fulton (1901), 87 Mo. App. 228.

A judge cannot accept the notes of an official stenographer as determining what evidence was introduced and what rulings were made independently of his own recollection and judgment. It is the duty of the court to use such notes merely as an aid to his recollection and not as a substitute for it.

(Ill.) People v. Anthony (1889), 129 Ill. 218, 21 N. E. 780; People v. Chytraus (1899), 183 Ill. 190, 55 N. E. 666; People v. Holdom (1901), 193 Ill. 319, 61 N. E. 1014; State ex rel v. Chetlain (1905), 219 Ill. 248, 76 N. E. 364.

Where an exception to instructions on account of the omission of certain words is immediately taken on certain grounds and allowed by the court without objection, the court cannot in settling the statement claim that the said grounds did not in fact exist, nor insert in the statement the omitted words not shown by the stenographer's minutes.

(Wash.) In re Rosner (1893), 5 Wash. 488, 32 Pac. 106.

### 13C To Fix Compensation.

The compensation of official stenographers is often fixed by the court under authority conferred by statute.

(Cal.) Ex parte Reis (1883), 64 Cal. 233, 30 Pac. 306; McAllister v. Hamlin (1890), 83 Cal. 361, 23 Pac. 357.

(Ill.) People ex rel v. Raymond (1900), 186 Ill. 407, 57 N. E. 1066.

(N. J.) Knight v. Ocean County Freeholders (1887), 49 N. J. Law 485, 12 Atl. 625.

(Tex.) Cox v. Patten (1902), 66 S. W. (Tex. Civ. App.) 64.

The superior court of San Francisco has power to fix and order paid the compensation of its stenographers in a criminal case.

(Cal.) Ex parte Reis (1883), 64 Cal. 233, 30 Pac. 306; People v. Becker (1884), 66 Cal. xviii, 4 Pac. 942.

### 13D To Refuse to Stop Witness So That Counsel can Take Notes.

In a criminal case at which the testimony was being taken down under order of the court by a stenographer and delivered written out to counsel on the following morning, the court declined to stop a witness to enable counsel to take notes in their own way. *Held*, that this matter was discretionary with the court.

(Conn.) State v. Hoyt (1880), 47 Conn. 518.

### 13E To Compel County to Pay for Transcript for Defendant in a Criminal Case.

A judge cannot in a criminal case grant an order upon the treasurer to pay for writing out notes in longhand.

(Ga.) Henderson v. Parry (1893), 93 Ga. 255, 20 S. E. 107.

See cases cited at 6H in this digest.

**13F To Compel Payment of Fees.**

A circuit judge cannot require the fees of a stenographer for assisting him in the preparation of the decree in a case to be paid out of the fund in court.

(S. C.) Hughes v. Shingle Co. (1897), 51 S. C. 1, 28 S. E. 2.

A court will protect a stenographer by a summary order against an attorney, when it appears that the attorney has wrongfully refused to pay the charges of a stenographer.

(N. Y.) Wright v. Nostrand (1879), 58 How. Pr. (N. Y.) 184.  
See cases cited under 6M of this digest.

**13G To Compel Furnishing Transcript.**

The supreme court may require a stenographer to furnish a transcript for its own use upon the hearing of an appeal in a murder case where it is shown that the stenographer declines to furnish the same to appellant without pay, and that appellant is unable to pay for it, and upon this showing it will reinstate an appeal which has been dismissed by the clerk for failure to serve the "case," and will continue the case ad interim.

(S. C.) State v. Wine (1898), 55 S. C. 193, 33 S. E. 1.

Mandamus will lie to compel a court stenographer who reported a case under the Penal Code of 1895, § 981, to transcribe his notes of the evidence and charge of the court and file the same.

(Ga.) Williams v. Cooley (1906), 127 Ga. 21, 55 S. E. 917.

M. was employed by one of the parties to a proceeding had before the city council of the city of Lincoln sitting as a board of equalization, to appear at such hearing and take down the evidence in shorthand. The clerk of the board, who claimed the right to employ a reporter, and others interested, relying on the presence of M., who was a competent reporter, made no further arrangements for a record of the proceedings, regarding him as the official reporter, to whom stipulations between the parties were dictated, and exhibits in the case delivered, and by whom all the evidence was taken down. *Held*, that mandamus would lie to compel M. to deliver a transcript of the evidence to the complainant in the proceeding, notwithstanding a secret agreement by the terms of which he was to deliver a transcript to only one of the parties.

(Neb.) Mockett v. State (1903), 70 Neb. 518, 97 N. W. 538.

Under a statute providing for a court stenographer, and for the use of his notes in preparing the record on appeal, and for the taxation of the cost thereof, such notes may be used by the opposite party in proposing amendments to the record and the court may require appellant at his own expense to furnish the opposite party with a copy of the stenographer's minutes necessary to prepare such amendments.

(Mich.) Gilles v. Kent Circuit Judge (1895), 106 Mich. 687, 64 N. W. 733.

An attorney cannot be compelled to deliver to a substituted attorney a copy of the stenographer's minutes of the first trial which resulted in a disagreement, for which transcript the first attorney has paid with his own money. The new attorney can obtain a copy from the stenographer, if desired, by paying the proper fees.

(N. Y.) Sweet v. Ellis (1913), 160 App. Div. 870, 144 N. Y. S. 556.

An application for a writ of mandamus to compel the circuit court stenographer to deliver a transcript of testimony on payment or tender of the statutory fees therefor should be made to the circuit court and not to the supreme court.

(Mich.) Lyle v. Sherman (1907), 147 Mich. 424, 110 N. W. 952.

The stenographer may be punished as for contempt for refusing to furnish at the statutory rate the minutes taken by him.

(N. Y.) *Cavanaugh v. O'Neill* (1897), 20 Misc. 233, 45 N. Y. S. 789.

Where a defendant convicted of a crime was too poor to pay for a transcript of the proceedings at his trial, and an order was made as authorized by Code, § 373 (§ 6376 Codes of 1907) directing the official stenographer to furnish the defendant with a copy of the evidence, to be paid for by the county, in order that he might prepare a bill of exceptions, and, after numerous extensions of time for the settling of the bill of exceptions, the stenographer failed to furnish the transcript, and the court refused to make an order compelling the furnishing of such transcript, the Supreme Court would not compel obedience to the order to furnish the transcript by mandamus, since the court making the order alone had authority to punish the stenographer's contempt.

(Mont.) *State ex rel Dempsey v. Second Jud. Dist. Ct.* (1901), 24 Mont. 566, 63 Pac. 389.

Under a rule that exceptions lie only to rulings on questions of law arising on the trial, the question of the power of the presiding judge to make an order relating to copy of the stenographer's transcript of the case is not reviewable on exceptions.

(Vt.) *Ide v. Boston & M. R. R.* (1909), 83 Vt. 66, 74 Atl. 401.

Mandamus lies to compel the stenographer to write out and file a list of the objections, rulings and exceptions occurring on the trial, as required by the statute, where an order of the court is insufficient.

(Mont.) *State v. Supple* (1899), 22 Mont. 134, 56 Pac. 21; *State v. Ledwidge* (1902), 27 Mont. 197, 70 Pac. 511.





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